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## IAB # IV 2305615

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INTERNAL AFFAIRS BUREAU SUMMARY
CASE #IV2305615

| | |
|---|---|
| **Subjects:** | **Matthew Funicello, Employee #[redacted]**<br>**Deputy Sheriff**<br>**Palmdale Sheriff Station** |
| | **David Shea, Employee #[redacted]**<br>**Deputy Sheriff**<br>**Palmdale Sheriff Station** |
| **Witnesses:** | [redacted] |
| | [redacted] |
| **Date:** | **July 22, 2011/Tuesday** |
| **Time:** | **approximately 0200 hours** |
| **Location:** | **Palmdale Sheriff Station**<br>**unknown exact location** |

## SYNOPSIS:

On July 21, 2011, Subject Deputy Matthew Funicello, employee #[redacted] and Subject Deputy David Shea, employee #[redacted] were assigned to transport two handcuffed arrestees from Palmdale Station to Custody Division facilities for medical reasons. One of the arrestees, Witness [redacted] after she was released from custody, made a citizen's complaint on July 28, 2011, about a matter unrelated to Deputy Funicello and Deputy Shea. During the course of the inquiry into the Watch Commander's Service Comment Report, #200681 (Refer to **Exhibit A**, pages **76 and 77**), Witness [redacted] made an allegation that the driver, Subject Deputy Funicello and Subject Deputy Shea stopped their radio car during the transport and physically assaulted the other arrestee, Witness [redacted] due to inappropriate comments Witness [redacted] was making toward her. This allegation was later corroborated by Witness [redacted] who had no prior knowledge and no connection to Witness [redacted]

Both witnesses independently gave a similar account of the incident.

**IAB Note:** Subject Deputy Funicello and Subject Deputy Shea were not involved in either arrest of Witness [redacted] or Witness [redacted] who were arrested independently of each other. Subject Deputy Funicello and Subject Deputy Shea were assigned to transport only.

**IAB Note:** The Internal Criminal Investigations Bureau (ICIB) case was presented to the District Attorney. On April 11, 2013, The District Attorney's Office filed 149 P.C., Assault under the color of authority on Subject Deputy Funicello (Refer to **Exhibit B**, Felony Complaint).

Subject Deputy Shea has not been charged with any crime at this time.

***The following narratives are intended only as a synopsis of the interview. Additional information and precise wording may be obtained by reviewing the audio recorded interview and verbatim transcription.***

## WITNESS STATEMENTS:

**Witness [redacted]**

Witness [redacted] was interviewed on January 6, 2012, by Internal Criminal Investigations Bureau (ICIB) Sergeant Raymond Moeller, employee # [redacted] and Sergeant John Kniest, employee # [redacted] (Refer to **Exhibit A, pages 15 through 27**).

Witness [redacted] said after her arrest, she was transported for medical reasons with Witness [redacted] During the transport, Witness [redacted] made sexually charged comments toward Witness [redacted] Witness [redacted] said she and Witness [redacted] began to exchange words back and forth. The deputies yelled at Witness [redacted] to "Shut the fuck up," called him "nigger," "coon," and said, "You niggers are too loud and never know when to shut the fuck up." Witness [redacted] said Witness [redacted] "Was talking loud at times, but he was also just talking to himself." She explained she recognized Witness [redacted] had some sort of mental condition. She said two of her [redacted] were autistic and she understood how a person could talk to oneself. Witness [redacted] said she was not going to curse and engage with someone who had a mental condition.

Witness [redacted] said she told the driver, Subject Deputy Funicello, that she was not comfortable in the back seat with Witness [redacted] Witness [redacted] said Subject Deputy Funicello abruptly swerved from the carpool lane to the emergency lane of the freeway and stopped so suddenly, she and Witness [redacted] were thrown forward.

Subject Deputy Funicello exited the driver's side of the radio car, opened the driver side passenger door, "Then beat the living hell out of the male black prisoner." Witness [redacted] said she saw Subject Deputy Funicello striking Witness [redacted] with his fists, yelling at him to, "Shut the fuck up." Witness [redacted] said the force of the assault on Witness [redacted] by Subject Deputy Funicello caused him to push against her, and she was pushed against the door of the passenger side of the radio car. Witness [redacted] said Witness [redacted] was crying and said, "Leave me alone dawg." This term seemed to enrage Subject Deputy Funicello who became more forceful in his assault.

Witness [redacted] said she was removed from the backseat of the radio car by Subject Deputy Shea and placed, "Right next to the car, near the rear wheel, facing away from the vehicle." Witness [redacted] said Subject Shea, "Joined with the driver deputy and basically "tag-teamed" the male prisoner." Witness [redacted] told investigators she only saw the passenger deputy (Shea) in her peripheral vision as she stood outside the radio car. Witness [redacted] said she tried to look the other way, "In the hope the deputies would spare her from any such similar treatment." Witness [redacted] "Heard the commotion in the backseat and the sound of what she believed was someone being hit." She said she heard both deputies use obscene and racial slurs during the assault. Witness [redacted] was asked by investigators what she recalled hearing. She said she heard statements, "Learn your place, shut the fuck up, when I tell you to shut the fuck up, then shut the fuck up, and I'm not your fucking dawg." She said the word "nigger" was used a lot.

Witness [redacted] was placed back in the radio car and the deputies continued on their transport. Once inside the radio car, Witness [redacted] was crying and she told him he needed to tell somebody what happened. Witness [redacted] told her, "No, because it would get worse."

Witness [redacted] said she was dropped off first at Century Regional Detention Facility. Witness [redacted] was worried for Witness [redacted] and what the deputies might do during the remainder of the transport. She said, "The deputies apologized to her. They told her, "Sometimes guys needed to learn their place, and they were sorry she had to witness what had happened."

Witness [redacted] was asked if she saw any injuries on Witness [redacted] when she was placed back inside the radio car. She believed she saw some blood coming from Witness [redacted] nose, although she said it might have been sweat. Witness [redacted] said she saw a knot on the right side of Witness [redacted] forehead.

ICIB investigators asked Witness [redacted] the extent of Subject Shea's involvement. Witness [redacted] said although Subject Shea was involved in the assault on Witness [redacted] "She felt the passenger deputy (Shea) was only involved to seem cool to the driver deputy." Subject Funicello was the prominent aggressor toward Witness [redacted] Witness [redacted] said, "Even when the patrol car was ultimately pulled off the road, the passenger deputy initially stayed in the car while the driver deputy made contact with the male prisoner."

> **IAB Note:** ICIB investigators asked Witness [redacted] if she knew where the radio car was stopped on the freeway when the incident took place. She was shown a map of the area, but told investigators she was not sure what freeway they were travelling on. Witness [redacted] said they had been traveling approximately twenty minutes prior to Subject Deputy Funicello stopping the radio car.

**Witness [redacted]**

Witness [redacted] was interviewed on January 5, 2012, by Internal Criminal Investigations Bureau Sergeant Moeller and Sergeant Kniest (Refer to **Exhibit A, pages 7 through 15, and pages 70 through 74).**

Witness [redacted] told investigators he was transported from Palmdale Sheriff Station due to his schizophrenia. When asked by investigators if anything happened, Witness [redacted] said, "He was beat up." Witness [redacted] was asked who beat him and why, he said, "By the cop." Witness [redacted] said the deputy driving the radio car (Funicello) was the one who had, "Beat him up because he was talking." Witness [redacted] said he was unsure what freeway they were travelling on when the incident occurred, but Subject Deputy Funicello, "Pulled over to the side of the freeway, got out of the car, and beat him up."

Witness [redacted] estimated they had been driving approximately thirty to forty-five minutes when Subject Deputy Funicello pulled the radio car abruptly to the side of the road and began his assault.

Sergeant Moeller described Witness [redacted] as, "Becoming somewhat annoyed with the questions posed by himself and Sergeant Kniest." They explained to Witness [redacted] they were there to ask questions to establish if Department personnel were acting inappropriately, and the questions were necessary.

Witness [redacted] said during the transport, he made a comment to Witness [redacted] that he thought she was cute and had nice legs.

Witness [redacted] yelled at Witness [redacted] why he was looking at her legs. Witness [redacted] said Subject Funicello told him, "Shut the fuck up," and "Called me a nigger sometimes, throughout the ride too."

Witness [redacted] explained after the radio car pulled over to the side of the freeway, "He screeched the wheels and everything, one deputy opened the driver's side rear door, and the other deputy opened the passenger side rear door." Subject Deputy Funicello started hitting Witness [redacted] approximately five to six times with his hands and fists. Subject Deputy Shea remained on the passenger side with Witness [redacted] Witness [redacted] said Subject Deputy Shea did not hit him.

Witness [redacted] said he basically climbed on top of Witness [redacted] to escape Subject Deputy Funicello's assault, but he continued to hit him. Witness [redacted] said Subject Deputy Funicello hit him twice on the left side of his cheek and the other strikes were to the body.

> **IAB Note:** Witness [redacted]s medical records did not reveal documentation of visible injuries after his transport with Subject Deputy Funicello and Subject Deputy Shea, nor did Witness [redacted] make any complaints regarding any injuries (Refer to **Exhibit A, pages 112 through 115).**

Sergeant Moeller asked Witness [redacted] what he could have done to provoke Subject Deputy Funicello to react in such a manner, and he said he had been singing in the radio car.

Witness [redacted] said at some point, Witness [redacted] was outside of the radio car with Subject Deputy Shea, but he did not see what they were doing.

> **IAB Note**: During the initial Watch Commanders Service Comment Report investigation by Lieutenant Paul Clay, employee # [redacted] Witness [redacted] was interviewed by Palmdale Sheriff Station Sergeant Jeffrey Curran, employee # [redacted] In that interview Sergeant Curran asked Witness [redacted] if the arresting deputies mistreated him in any way and he said, "No." Sergeant Curran asked Witness [redacted] if the deputies who transported him mistreated him in any way and he said, "Nah, not so much." Sergeant Curran asked if everyone was "Professional" and he said, "Pretty much." (Refer to **Exhibit A, pages 116 through 122** for Lieutenant Clay's report, and **Miscellaneous documents** for CD of videotaped interview).

**IAB Note:** After the Watch Commander's Service Comment Report was submitted for approval it was returned by Palmdale Sheriff Station Lieutenant Don Ford, employee #[redacted] for follow up. Lieutenant Ford told Lieutenant Clay the interview with Witness [redacted] by Sergeant Curran was inadequate and needed clarification. Lieutenant Clay telephonically interviewed Witness [redacted] who said during the transport the deputies "Beat him up, and hit him all over his body."

**IAB Note**: Internal Criminal Investigations Bureau Sergeants interviewed Lieutenant Clay on January 12, 2012, regarding his investigation into the allegations made by Witness [redacted] (Refer to **Exhibit A, pages 58 through 70).**

## SUBJECT STATEMENTS:

### Subject Deputy David Shea:

Subject Deputy Shea was interviewed on January 17, 2013, by Sergeant Laura Haynes, employee #[redacted] and Sergeant Brenda Parker, employee #[redacted] of the Internal Affairs Bureau. Subject Deputy Shea was represented by Charles Goldwasser of the Law Offices of Charles Goldwasser.

Subject Deputy Shea essentially gave the same account as documented by Internal Criminal Investigations Bureau Sergeant Moeller and Sergeant Kniest (Refer to **Exhibit A, pages 28 through 53**).

Subject Deputy Shea recalled the transport of Witness [redacted] and Witness [redacted] but did not know the reason why they were transported. Subject Deputy Shea said Witness [redacted] "Was just yelling out cuss words randomly," and "Being really loud and just yelling at the top of the lungs almost." Subject Deputy Shea said he and Subject Deputy Funicello were telling Witness [redacted] to, "Stop it," and "Be quiet."

Subject Deputy Shea said, "As we were getting to the 14-5 interchange, so we're probably more than half hour more to drive, I remember hearing his seat belt move. The male black's seat belt like slap against the plastic seats in the back." Subject Deputy Shea said without warning Subject Deputy Funicello, "Abruptly pulled over to the side of the road on the freeway," and, "Got out of the car quickly." Subject Deputy Shea said he was not sure what Subject Deputy Funicello was going to do so he also exited the radio car and went over to the driver's side passenger door. Subject Deputy Shea saw Subject Deputy Funicello, had opened the driver's side passenger door where Witness [redacted] was sitting.

He saw Subject Deputy Funicello was, "Hunched into the car, looked like one knee on the seat and the other foot on the ground." Subject Deputy Funicello appeared to Subject Deputy Shea to be very agitated with Witness [redacted] "He was in his face, like really close quarters." Subject Deputy Shea said although he did not specifically see Subject Deputy Funicello striking Witness [redacted] "I believed something might escalate that might be out of policy. But I, I did not see anything occurring that I walked away from. But I thought something might happen."

Subject Deputy Shea said he walked over to the passenger side of the radio car to check on Witness [redacted] She attempted to exit the radio car but he told her to stay seated. Subject Deputy Shea said both he and Subject Deputy Funicello re-entered the radio car and the remainder of the transport was in silence. When they arrived at Century Regional Detention Facility to drop off Witness [redacted] Subject Deputy Shea said Witness [redacted] told him, "Hey I'm cool with what happened." He was asked what his perception of that statement by Witness [redacted] meant to him. Subject Deputy Shea said after Witness [redacted] made that statement, "When I was there at the car, I thought something might happen based on his (Funicello's) behavior. And then when she stated this later, that's when I really had the idea that something had occurred."

Subject Deputy Shea was asked why he did not report the use of force to a supervisor. He said, "Lack of judgement and I believed that I hadn't seen exactly what had occurred exactly so I wasn't gonna make ripples, something I hadn't seen myself."

Subject Deputy Shea denied hearing Subject Deputy Funicello use the words, "Coon," or "Nigger" and he also denied using those words.

**Subject Deputy Matthew Funicello**:

Subject Deputy Funicello was interviewed on February 14, 2013, by Sergeant Laura Haynes and Sergeant Brenda Parker of Internal Affairs Bureau. Subject Deputy Funicello was represented by Deborah Wadleigh, of the Law Offices of Green and Shinee.

Subject Deputy Funicello did not provide a statement to Internal Criminal Investigations Bureau Sergeants.

Subject Deputy Funicello recalled the transport of Witness [redacted] and Witness [redacted] He explained prior to leaving Palmdale Sheriff Station for the transport he recalled seat belting Witness [redacted] and Subject Deputy Shea seat belted Witness [redacted] He recalled that vividly because, "We do it at the same time 'cause it takes two to, you know, so you don't get all up in their business, you know, I'll hand him seatbelt and then he'll buckle and vice versa."

Subject Deputy Funicello said fifteen to twenty minutes into the transport Witness [redacted] and Witness [redacted] began arguing. He did not recall the content of the argument but said he heard Witness [redacted] "Making sexually explicit remarks to her, and then he was, during that time he was making a bunch of mumbo jumbo."

Subject Deputy Funicello said at one point during the drive he heard Witness [redacted] "Popping off his seatbelt while we were driving." He described, "You could hear the click and the ratchet on the seatbelt thing." Subject Deputy Funicello said he pulled the radio car over to the shoulder of the freeway and opened the door to re-seatbelt Witness [redacted] As he, "Opened his door, and I could see him, he was kind of scooched over on to her side whatever. And so I went in to, to grab him to scoot him over here. He spit in my face. Missed, but you know, tell him, missed, he missed but I caught some mist. Does that make sense?" Subject Deputy Funicello said as he reached in to grab Witness [redacted] "He looked as if he was going to spit at me again, and so I pushed his head back and so he wouldn't spit at me, and held him there, so I can get the seatbelt back on him." Subject Deputy Funicello said he told Witness [redacted] to, "shut up, be quiet" and "stay still." Subject Deputy Funicello said he was able to re-seatbelt Witness [redacted] without further incident.

Subject Deputy Funicello was asked if he referred to Witness [redacted] as, "nigger," or "coon," and he said, "No."

Subject Deputy Funicello was asked what Subject Deputy Shea was doing during this altercation with Witness [redacted] but he could not recall.

Subject Deputy Funicello was asked if his perception of the spitting by Witness [redacted] was assaultive toward him, and he said it was, "An inconvenience."

> **IAB Note:** During the Watch Commanders Service Comment Report investigation by Lieutenant Clay, he called Subject Deputy Funicello and asked if anything had occurred during the transport of Witness [redacted] and Witness [redacted] Subject Deputy Funicello told Lieutenant Clay, "No." He said he called Lieutenant Clay back almost immediately and disclosed they had stopped the radio car so he (Funicello) could re-seatbelt Witness [redacted] but that was the extent of the stop. Subject Deputy Funicello was asked if he told Lieutenant Clay at that time about Witness [redacted] spitting at him and he said, "No." When asked why he would not reveal an incident like that, "I didn't feel that it was a big deal in my opinion. I didn't feel like a victim of a crime or anything like that. Somebody doing that to me." He said, "I'm a former marine, I've been to Iraq, I've been shot, I've been shot at. I've seen some fucked up crazy shit. And that was not fucked up crazy shit."

**IAB Note**: Lieutenant Clay contacted Subject Deputy Shea during his Watch Commanders Service Comment Report investigation regarding the transport and if anything occurred. Lieutenant Clay said Subject Deputy Shea told him nothing happened, but did not mention stopping to re-seatbelt Witness [redacted] During the Internal Criminal Investigations Bureau Interview with Subject Deputy Shea, he was asked if Lieutenant Clay contacted him regarding the transport. Subject Deputy Shea told investigators Lieutenant Clay never contacted him to inquire about the transport, and if anything unusual occurred.

**IAB Note**: Witness [redacted]s original statement to ICIB investigators did not mention Witness [redacted] spitting at Subject Deputy Funicello as he stated in his interview. Witness [redacted] was contacted by Sergeant Haynes to clarify if Witness [redacted] spit at Subject Deputy Funicello. Witness [redacted] said she was in the backseat seat belted as was Witness [redacted] When Subject Deputy Funicello opened the radio car door, Witness [redacted] had no time to spit. Witness [redacted] "Had his head ducked down to protect himself from the Sheriff's," and Subject Deputy Funicello's, "Full force shots to his face."

Witness [redacted] was asked if it was possible Witness [redacted] spit at Subject Deputy Funicello while she was out of the radio car and she said she did not think so because the deputies were "Whaling" on Witness [redacted] and he kept his head down.



Leroy D. Baca, Sheriff

*County of Los Angeles*
**Sheriff's Department Headquarters**
*4700 Ramona Boulevard*
*Monterey Park, California 91754-2169*



July 3, 2013

Deputy David Shea, #[redacted]

Dear Deputy Shea:

You are hereby notified that it is the intention of the Sheriff's Department to discharge you from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective the close of business July 25, 2013.

An investigation under IAB File Number IV2305615, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.10, Obedience to Laws, Regulations, and Orders [as it pertains to 5-09/430.00, Use of Force Reporting]; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/050.10, Performance to Standards; and/or 3-01/040.97, Safeguarding Persons in Custody; and/or 3-01/030.85, Derogatory Language, on or about July 21, 2011, while on duty, you failed to conform to the standards established for your rank or position as a deputy sheriff when you failed to safeguard and treat [redacted] and [redacted] in a respectful, courteous, and civil manner as you yelled at and directed derogatory language toward [redacted] an inmate in the custody of the Los Angeles County Sheriff's Department who was apparently suffering from mental illness. You failed to use reasonable judgment and exercise the integrity expected of a deputy sheriff and seek out assistance from a supervisor when you knew or should have known Deputy Matthew Funicello used unnecessary and excessive force

against [redacted] as [redacted] was handcuffed and seated in the rear seat of a patrol car, and under your control and custody. You failed to report to a Department supervisor, and/or document the circumstances in which you witnessed the use of force against [redacted] and/or failed to obtain medical treatment for [redacted] after realizing [redacted] was assaulted. Your conduct was in conflict with the Department's Core Values as you failed to perform your duties honorably, causing undue embarrassment and/or damage to the reputation of, and/or eroding the public's confidence in the Department. You brought discredit to yourself and the Department as evidenced by, but not limited to:

a. using and/or directing profanities at [redacted] and/or telling [redacted] to "shut the fuck up;" and/or,

b. failing to recognize that [redacted] was suffering from mental illness and appropriately addressing [redacted] behavior in accordance to the standards, protocols and expectations of the Department; and/or,

c. failing to safeguard [redacted] who was handcuffed and in custody when Deputy Matthew Funicello assaulted him; and/or,

d. placing [redacted] who was in the custody of the Los Angeles Sheriff's Department, outside of the patrol car, unattended on a multi-lane highway, handcuffed, and facing away from the patrol car, as you entered the rear seat portion of the patrol car to assist Deputy Funicello; and/or,

e. failing to contact a supervisor and/or report the use of force after admitting "I thought it was possible;" and/or,

f. exercising poor judgment, and/or not wanting to make ripples, and/or not wanting to be labeled as a snitch, when deciding not to report the use of force incident to a Department supervisor after surmising the incident was something which had escalated out of policy, and/or words to that effect.

2. That in violation of Manual of Policy and Procedures Section 3-01/040.75, Failure to Make a Statement and/or Making False Statements During Departmental Investigations, on or about January 6, 2012, you failed to make full, complete, and/or truthful statements, and/or made false statements during a Departmental investigation as evidenced by, but not limited to:

   a. failing to provide a complete account of Deputy Funicello's actions and your actions when Deputy Funicello stopped the patrol vehicle on the freeway and confronted [redacted] by only stating Deputy Funicello was yelling at the person and/or you opened the female's door and asked if she was okay, and/or stating "that's the whole story," and/or stating "geez what happened? I don't want to know;" and/or,

   b. stating you never entered into the back seat area of the patrol vehicle after it was stopped on the freeway; and/or,

   c. stating "She never got out. I took her out, stood her up, nothing like that." "No. Stayed in the car," when asked if at any time did you remove [redacted] from the car while it was stopped on the freeway, and/or words to that effect; and/or,

   d. stating, "we got out simultaneously and I went over there," when asked if you saw anything going on in the back seat of the vehicle; and/or,

   e. stating, "She started to jump out and then I'm like, no, it's cool. It's cool. Stay there," and/or words to that effect, in an attempt to explain whether you removed [redacted] from the patrol vehicle when it was stopped on the freeway; and/or,

   f. stating, "No " when asked if you and Deputy Funicello talked to [redacted] when you arrived at Century Regional Detention Facility regarding the incident in the rear seat of the patrol car when it was stopped on the freeway; and/or,

   g. stating, "I didn't want anything to do with it, and I didn't try to see because I didn't want to see," and/or words to that effect; and/or,

h. stating, "I know I am at this point, but what happened between him and that suspect in the back seat is his business because he was there. He was the one involved. I, fortunately, from I, I consider myself fortunate not to see what had occurred," and/or words to that effect.

3. That in violation of Manual of Policy and Procedures Section 3-01/040.75, Failure to Make a Statement and/or Making False Statements During Departmental Investigations, on or about January 17, 2013, you failed to make full, complete, and/or truthful statements, and/or made false statements as evidenced by, but not limited to:

a. stating you did not hear Deputy Funicello use the words nigger and/or coon; and/or,

b. stating that you never removed [redacted] from the patrol car when Deputy Funicello stopped the vehicle on the freeway and confronted [redacted] and/or,

c. stating you did not witness Deputy Funicello use reportable force on [redacted]

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet which are incorporated herein by reference.

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with Chief Jacque La Berge, on July 25, 2013, at 1100 hours, in his office, which is located at 4700 Ramona Boulevard, Monterey Park, California 91754. If you are unable to appear at the scheduled time and wish to schedule some other time prior to July 25, 2013, for your oral response, please call Chief La Berge's secretary at (323) 526-5126, for an appointment.

If you choose to respond in writing, please call Chief La Berge's secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to Chief La Berge's office by no later than July 25, 2013.

Unless you are currently on some other type of authorized leave, pursuant to Rule 16.01 of the Los Angeles County Civil Service Commission Rules, effective immediately, you are on paid administrative leave which will continue during the fifteen (15) business days you have to respond to the intended discharge or until the conclusion of your pre-disciplinary hearing. If you are presently on an authorized leave, that leave will continue during the fifteen (15) business days you have to respond to the intended discharge, or until the conclusion of your pre-disciplinary hearing.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the discipline indicated herein.

If you did not receive the investigative material on which your discipline is based at the time you were served with this correspondence, you may contact the Internal Affairs Bureau at (323) 890-5300, to obtain a copy of the case file.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Alicia E. Ault, Captain
Internal Affairs Bureau

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.

AEA:PMP:cj

c: Advocacy Unit
Employee Relations Unit
Jacques A La Berge, Chief, North Patrol Division
Internal Affairs Bureau
Office of Independent Review (OIR)
(File #2305615)






# CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES



December 17, 2014

FINAL COMMISSION ACTION

Subject of Hearing: *Petition of* ***DAVID SHEA*** *for a hearing on his* ***discharge****, effective August 1, 2013, from the position of Deputy Sheriff, Sheriff's Department,* **Case No. 13-370.**

The Civil Service Commission, at its meeting held on December 10, 2014 approved findings in the above-entitled case. The petitioner's objections were overruled.

Since a copy of these findings has already been provided to all the parties, we have enclosed a copy of the signed formal order of the Commission for your records.

Anyone desiring to seek review of this decision by the Superior Court may do so under Section 1085 or 1094.6 of the Code of Civil Procedure as appropriate. An action under Section 1094.6 can only be commenced within 90 days of the decision.

Lawrence D. Crocker
Executive Director

Enclosure

c: David Shea
Charles Goldwasser
Catherine Mathers
Robert Cuen

ROOM 522 KENNETH HAHN HALL OF ADMINISTRATION • 500 W. TEMPLE STREET, LOS ANGELES, CA 90012 • TELEPHONE (213) 974-2411 • FAX (213) 974-2534

BEFORE THE CIVIL SERVICE COMMISSION OF THE

COUNTY OF LOS ANGELES

| | |
|---|---|
| *In the matter of the* ***discharge****, effective August 1, 2013, from the position of Deputy Sheriff, Sheriff's Department, of*<br><br>**DAVID SHEA**<br>**(Case No. 13-370)** | ORDER OF THE CIVIL SERVICE COMMISSION |

On December 10, 2014, the Civil Service Commission of the County of Los Angeles overruled the petitioner's objections and adopted as its final decision the findings and recommendation of the Hearing Officer, Robert Cuen, to sustain the Department.

Dated this 17th day of December, 2014.

**(ABSENT)**
Z. GREG KAHWAJIAN, President

EVELYN V. MARTINEZ, Member

NAOMI NIGHTINGALE, Member

CAROL FOX, Member

JOHN DONNER, Member

cmm

COUNTY OF LOS ANGELES CIVIL SERVICE COMMISSION

| | |
|---|---|
| In the Matter of the Appeal of<br><br>**DAVID SHEA,**<br>Appellant,<br><br>v.<br><br>**SHERIFF'S DEPARTMENT (DEPARTMENT),**<br>Respondent. | Case No. 13-370<br><br>PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION |

## APPEARANCES

For the Appellant: Charles Goldwasser, Attorney, Law Offices of Charles Goldwasser
5858 Wilshire Blvd., Suite 205
Los Angeles, CA 90036

For the Respondent: Catie Mathers, Attorney, Collins, Collins, Muir & Stewart
1100 El Centro Street
South Pasadena, CA 91030

Court Reporter: Mimi Murray

Hearing Officer: Robert M. Cuen, Attorney

Hearing Dates: February 13 and 14, 2014

## WITNESSES

### Department

Sergeant Ray Moeller: LA County Sheriff's Department, Internal Criminal Investigations Bureau (ICIB)

Kristina Galaviz: Inmate and Complaining Citizen

Chief Jacques LaBerge: LA County Sheriff's Department, North Division

## Appellant

Appellant David Shea: LA County Sheriff's Department, Deputy Officer

Chuck Dana: LA County Sheriff's Department, Deputy Officer

Jonathan Shnereger: LA County Sheriff's Department, Deputy Officer

## ISSUES

1. Are the allegations in the Department's letter of August 2, 2013, true?

2. If any or all are true, is the discipline appropriate?

## EXHIBITS

**Department's Admitted Exhibits (DE):**

1. Letter of Intent to David Shea, dated July 3, 2013

2. Letter of Discharge to David Shea, dated August 2, 2013

3. Disposition Memo for David Shea, signed July 2, 2013

4. Employee Training

5. No Exhibit Marked or Introduced

6. Policy Violations

7. Investigator's Log

8. Internal Affairs Bureau Investigation Documents
   - A. Table of Contents
   - B. Personnel Investigative Form 8 – 4
   - C. Investigation Summary 8 – 7
   - D. Transcribed Interview of [redacted] on 1/6/12 (ICIB) 8 – 19
   - E. Transcribed Interview of [redacted] on 1/5/12, 2/16/12 (ICIB) 8 – 85
   - F. Transcribed Interview of Deputy Funicello on 1/6/12 (ICIB) 8 – 135
   - G. Transcribed Interview of Deputy Shea on 1/6/12 (ICIB) 8 – 154
   - H. Transcribed Interview of Matthew Funicello on 2/14/13 (IAB) 8 – 227
   - I. Transcribed Interview of David Shea on 1/17/13 (IAB) 8 – 266

IAB Exhibit A: Internal Criminal Investigations Bureau Book
A. Table of Contents
B. Interview of [redacted] 8 – 323
C. Interview of [redacted] 8 – 332
D. Interview of David Shea 8 – 344
E. Interview of Matthew Funicello 8 – 369
F. Interview of [redacted] 8 – 374
G. Re-Interview of [redacted] 8 – 386
H. Interview of Dr. [redacted] 8 – 390
I. Exhibits 8 – 392
J. Miscellaneous Documents 8 – 490
IAB Exhibit. B: Felony Complaint for Subject Deputy Funicello and Arrest Warrant 8 – 507
A. Miscellaneous Documents 8 – 516

**Appellant's admitted exhibits (AE):**

1. Five simulated photographs that purport to depict Appellant's version of the facts. (A – E)

2. One simulated DVD that purports to depict Appellant's version of the facts.

**INTRODUCTION SUMMARY**

In 2006, David Shea (Appellant) started working as a Los Angeles County Deputy Sheriff. Prior to the subject allegations herein, Appellant was [redacted]

On August 2, 2013, the Sheriff's Department (Department) notified Appellant in writing that he would be discharged effective August 1, 2013. In short, the basis for the discharge was stated as follows:

1. On or about July 21, 2011, Appellant failed to report a use of force by his partner Deputy Funicello (Funicello) even though Appellant knew or should have known that Funicello used unnecessary and excessive force against Mr. Wright, who was handcuffed and seated in the rear seat of a patrol car under Appellant's control and custody.

2. On or about July 21, 2011, Appellant exercised poor judgment in not wanting to be labeled a snitch when he decided not to report the use of force after surmising the incident was something, which had escalated out of policy.

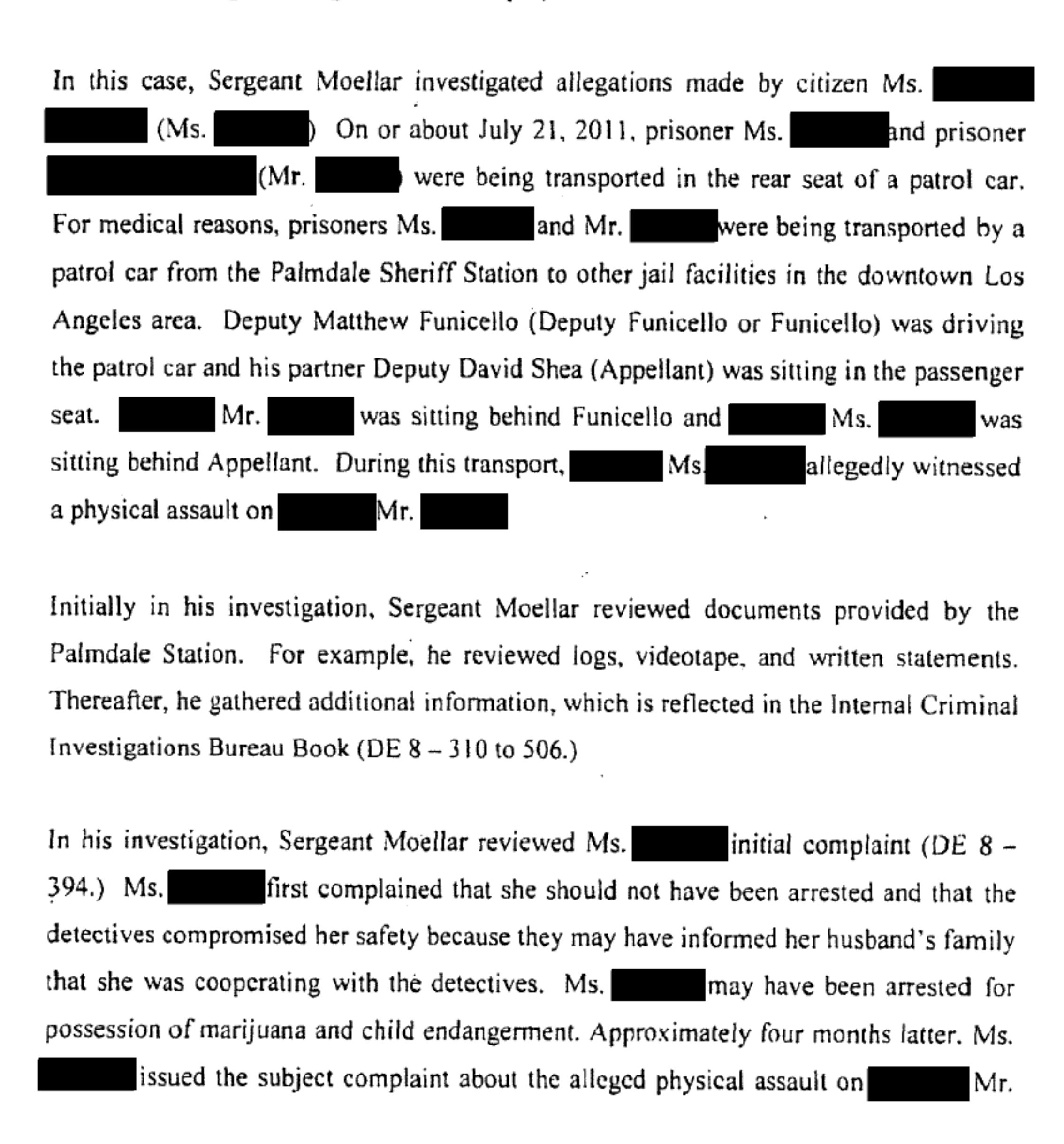
3. On or about July 21, 2011, Appellant used profanities at Mr. [redacted] such as shut the "fuck" up, as Mr. [redacted] was handcuffed and seated in the rear seat of a patrol car under Appellant's control and custody.

4. Appellant failed to make full, complete, and truthful statements during the Department investigations on January 6, 2012 and January 17, 2013 about what happened between Funicello and Mr. [redacted] as Mr. [redacted] was handcuffed and seated in the rear seat of a patrol car under Appellant's control and custody.

Appellant denied that he saw Deputy Funicello use any force on Mr. [redacted] as Mr. [redacted] was handcuffed and seated in the rear seat of the patrol car on or about July 21, 2011. Appellant, however, admitted that he concluded based on the totality of the circumstances that something happened between Funicello and Mr. [redacted] in the back seat. In a very telling admission, Appellant admitted that he should have reported what had happened between Funicello and Mr. [redacted] but he didn't. Equally importantly, Appellant admitted that the fear of retaliation in this case stopped him from doing the right thing, which was, reporting the incident in question.

Notwithstanding Appellant's denial, the direct and circumstantial evidence establishes that the primary allegations in the Department's August 2, 2013 letter are true. Also, the evidence establishes that the penalty of discharge is reasonably related to the seriousness of Appellant's misconduct and Appellant's record of service. Accordingly, the recommendation that Appellant be discharged from the position of a Deputy Sheriff is sustained.

## SUMMARY OF TESTIMONY AND EVIDENCE



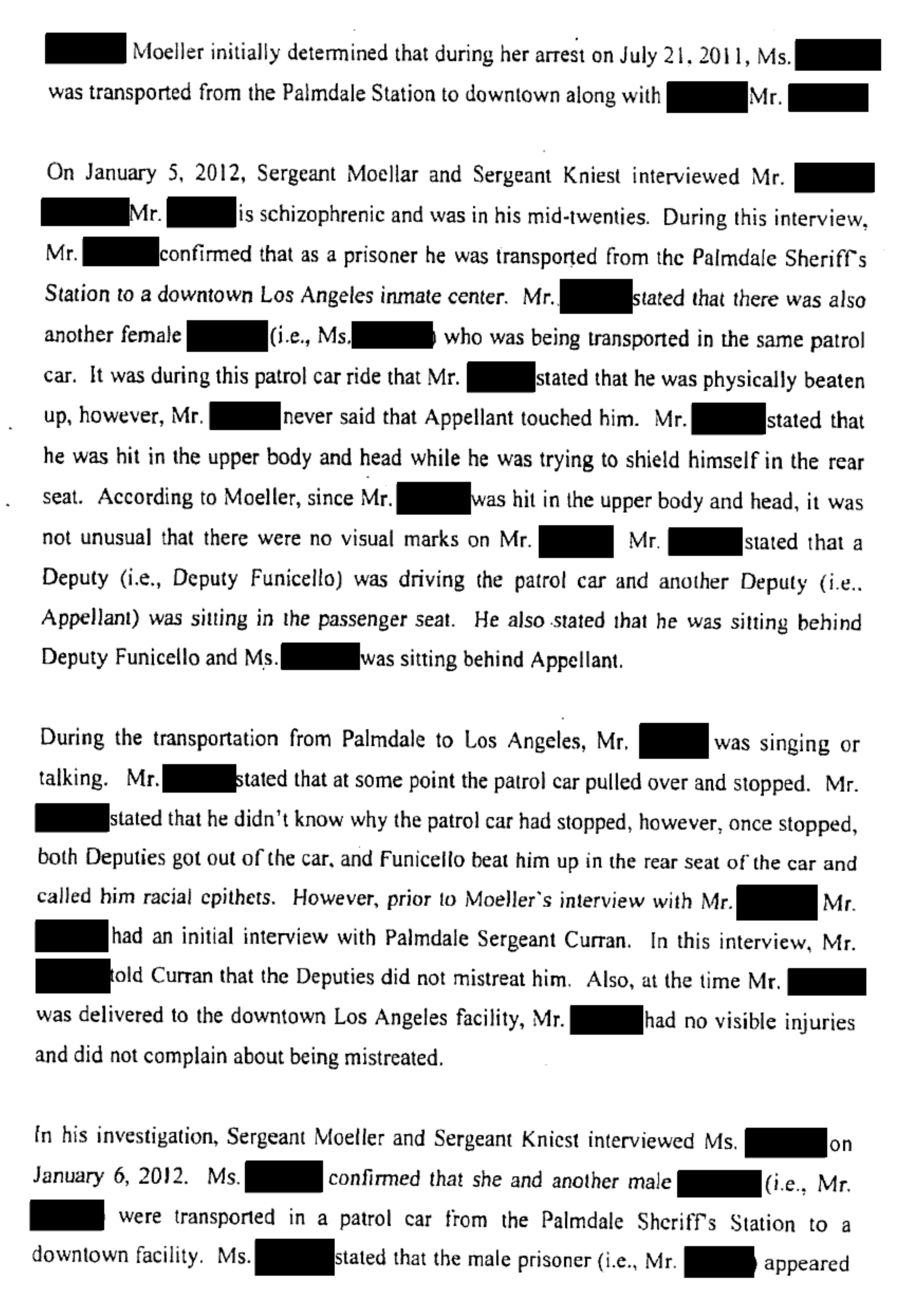
1. Sergeant Raymond Moeller Testimony:

Sergeant Raymond Moellar (Sergeant Moeller or Moeller) is currently assigned to the Internal Criminal Investigation Bureau (ICIB) for the Los Angeles County Sheriff's Department. As opposed to Internal Affairs Bureau (IAB) administrative investigations, the ICIB investigates allegations of an employee's criminal misconduct.

In this case, Sergeant Moellar investigated allegations made by citizen Ms. [redacted] (Ms. [redacted]) On or about July 21, 2011, prisoner Ms. [redacted] and prisoner [redacted] (Mr. [redacted] were being transported in the rear seat of a patrol car. For medical reasons, prisoners Ms. [redacted] and Mr. [redacted] were being transported by a patrol car from the Palmdale Sheriff Station to other jail facilities in the downtown Los Angeles area. Deputy Matthew Funicello (Deputy Funicello or Funicello) was driving the patrol car and his partner Deputy David Shea (Appellant) was sitting in the passenger seat. [redacted] Mr. [redacted] was sitting behind Funicello and [redacted] Ms. [redacted] was sitting behind Appellant. During this transport, [redacted] Ms. [redacted] allegedly witnessed a physical assault on [redacted] Mr. [redacted]

Initially in his investigation, Sergeant Moellar reviewed documents provided by the Palmdale Station. For example, he reviewed logs, videotape, and written statements. Thereafter, he gathered additional information, which is reflected in the Internal Criminal Investigations Bureau Book (DE 8 – 310 to 506.)

In his investigation, Sergeant Moellar reviewed Ms. [redacted] initial complaint (DE 8 – 394.) Ms. [redacted] first complained that she should not have been arrested and that the detectives compromised her safety because they may have informed her husband's family that she was cooperating with the detectives. Ms. [redacted] may have been arrested for possession of marijuana and child endangerment. Approximately four months latter. Ms. [redacted] issued the subject complaint about the alleged physical assault on [redacted] Mr.



[redacted] Moeller initially determined that during her arrest on July 21, 2011, Ms. [redacted] was transported from the Palmdale Station to downtown along with [redacted] Mr. [redacted]

On January 5, 2012, Sergeant Moellar and Sergeant Kniest interviewed Mr. [redacted] Mr. [redacted] is schizophrenic and was in his mid-twenties. During this interview, Mr. [redacted] confirmed that as a prisoner he was transported from the Palmdale Sheriff's Station to a downtown Los Angeles inmate center. Mr. [redacted] stated that there was also another female [redacted] (i.e., Ms. [redacted] who was being transported in the same patrol car. It was during this patrol car ride that Mr. [redacted] stated that he was physically beaten up, however, Mr. [redacted] never said that Appellant touched him. Mr. [redacted] stated that he was hit in the upper body and head while he was trying to shield himself in the rear seat. According to Moeller, since Mr. [redacted] was hit in the upper body and head, it was not unusual that there were no visual marks on Mr. [redacted] Mr. [redacted] stated that a Deputy (i.e., Deputy Funicello) was driving the patrol car and another Deputy (i.e., Appellant) was sitting in the passenger seat. He also stated that he was sitting behind Deputy Funicello and Ms. [redacted] was sitting behind Appellant.

During the transportation from Palmdale to Los Angeles, Mr. [redacted] was singing or talking. Mr. [redacted] stated that at some point the patrol car pulled over and stopped. Mr. [redacted] stated that he didn't know why the patrol car had stopped, however, once stopped, both Deputies got out of the car, and Funicello beat him up in the rear seat of the car and called him racial epithets. However, prior to Moeller's interview with Mr. [redacted] Mr. [redacted] had an initial interview with Palmdale Sergeant Curran. In this interview, Mr. [redacted] told Curran that the Deputies did not mistreat him. Also, at the time Mr. [redacted] was delivered to the downtown Los Angeles facility, Mr. [redacted] had no visible injuries and did not complain about being mistreated.

In his investigation, Sergeant Moeller and Sergeant Kniest interviewed Ms. [redacted] on January 6, 2012. Ms. [redacted] confirmed that she and another male [redacted] (i.e., Mr. [redacted] were transported in a patrol car from the Palmdale Sheriff's Station to a downtown facility. Ms. [redacted] stated that the male prisoner (i.e., Mr. [redacted] appeared

to have mental health issues because he would sing and talk to himself. Ms. [redacted] stated that during the trip the Deputies admonished him for singing and talking.

During this interview, Ms. [redacted] stated that Deputy Funicello stopped the patrol car and got out of the car and opened the driver side rear door and physically assaulted Mr. [redacted] Ms. [redacted] stated that Appellant initially looked at the rear seat and saw what was going on and then he got out of the car and removed her from the rear seat. Ms. [redacted] stated that after she was removed from the car, Appellant placed her outside the car. While outside the car, Ms. [redacted] heard both Deputies yelling certain terms such as, nigger, coon and shut-up. After several minutes, she was placed back in the rear seat of the patrol car. Once in the car, Ms. [redacted] stated that both Deputies appeared out of breath, and Mr. [redacted] was crying and she thought he might have had blood around his nose. Ms. [redacted] stated that she told Mr. [redacted] that he needed to complain but he said no. Mr. [redacted] never did file a complaint.

During the interview, Ms. [redacted] stated that she was scared after what she had witnessed in the patrol car. She stated that the Deputies apologized to her and they said that sometimes people needed to be put in their place. Ms. [redacted] was dropped off first on the day of the incident and she stated that she was worried for Mr. [redacted] because he would still be in the patrol car with the Deputies.

Ms. [redacted] was arrested on July 21, 2011. She filed a written complaint (8 – 394) on July 28, 2011. Approximately four months after her release, she complained about the physical assault on Mr. [redacted] Pursuant to this complaint, Lieutenant Clay had a telephone conversation with Ms. [redacted] Sergeant Moeller listened to this tape telephone conversation between Ms. [redacted] and Lieutenant Clay and Ms. [redacted] repeated similar allegations (i.e., Mr [redacted] was beaten-up in the patrol car) as she stated to him during his January 6, 2011 interview with Ms. [redacted]

On January 6, 2012, Sergeant Moeller along with Sergeant Kniest also interviewed Deputy Shea, which is reflected in exhibits 8 – 344-369. Moeller interviewed Appellant

as to the incident that occurred while transporting prisoners on July 22, 2011. Appellant indicated that he was partnered with Deputy Funicello and they picked up two prisoners for transportation. The prisoners were Mr. [redacted] and Ms. [redacted] Mr. [redacted] was sitting in the rear seat behind Funicello (i.e., patrol car driver) and Ms. [redacted] was sitting in the rear seat behind Appellant (i.e., patrol car passenger.)

At some point during the transport, Appellant stated that Mr. [redacted] started screaming and making sexual comments toward Ms. [redacted] During this time, there was verbal bantering between Mr. [redacted] and Ms. [redacted] and at some point thereafter, Appellant heard a seat belt being disconnected in the rear seat, whereupon Funicello pulled over and stopped the car. Sergeant Moeller stated that initially Appellant merely claimed Funicello walked to the rear seat and reattached the seatbelt on Mr. [redacted] and didn't mention anything about taking Ms. [redacted] outside the patrol car. However, while being interviewed by Moeller, Appellant's story changed. For example, Appellant stated that both he and Funicello were angry with Mr. [redacted] because of Mr. [redacted] verbal behavior (DE 8 – 352.) Also, during the interview, Appellant was cautioned that Moeller interviewed two individuals (i.e., Mr. [redacted] and Ms. [redacted] who didn't know each other but provided a similar story, which differed from Appellant's version of events. Moeller determined that Mr. [redacted] story was consistent with Ms. [redacted] version of events.

Sergeant Moeller maintains that during Lieutenant Clay's initial inquiry into this matter, Deputy Funicello and Appellant both said that the patrol car did not stop during the prisoner transportation. However, Appellant stated to Moeller that he never made that statement to Clay. In fact, Appellant stated to Moeller that the car stopped because he thought Funicello was pissed off that Mr. [redacted] had removed the seat belt. Finally, Appellant stated to Moeller that whatever happened in the car he had nothing to do with it. To that end, Appellant alluded to the fact that he knew Funicello had assaulted Mr. [redacted] but claimed he didn't see it and thus, because he didn't see it he was not sure what was happening in the back seat. Also, Appellant stated that he could not see Funicello's hands, and he could only see his back and rear legs because he was standing

behind Funicello. Moeller, however, stated that officer safety mandates that Appellant get involved and assist his partner because if a fight ensues and Funicello losses his gun then everyone's safety is jeopardized. In addition, if Mr. [redacted] was causing a real disruption, Ms. [redacted] should have been removed from the rear seat, which would have allowed Appellant to have access to the situation because Funicello's safety would have been paramount. To that end, Appellant should have had his eyes on the situation between Funicello and Mr. [redacted] rather than not wanting to get involved.

In his investigation, Sergeant Moeller and Sergeant Kniest also interviewed Deputy Funicello, which is reflected in DE 8 – 369-374. Funicello was informed that since the interview was a criminal investigation, he was not required to talk to Moeller. Initially, Funicello talked with Moeller but Funicello cut the interview short after he was questioned about whether or not Funicello told Lieutenant Clay that he never stopped the patrol car. Specifically, prior to ending the interview, Funicello confirmed that he told Clay that he did not stop the car during the prisoner transportation on July 21, 2011.

In his investigation, Sergeant Moeller and Sergeant Kniest also interviewed Lieutenant Clay. Moeller stated to Clay that Appellant indicated that Appellant had never spoken to Clay. During the interview, Clay stated that he spoke to both Funicello and Appellant. Clay stated that Appellant told him that on the day in question, that they delivered the two prisoners without incident (DE 8 – 405.) Clay also stated that Funicello stated they delivered the two prisoners without incident, however, prior to Clay re-interviewing Mr. [redacted] Funicello called Clay and told him that they did stop the patrol car to place a seat belt on Mr. [redacted] Thereafter, Clay re-interviewed Mr. [redacted] and he said the Deputies stopped the car and he was assaulted in the rear seat.

Deputies are required to report use of force or suspected use of force whether or not it was necessary. Also, Deputies are required to report use of force whether or not injuries occurred.

In his investigation, Sergeant Moeller gathered and reviewed documents marked as DE 8 – 310 to 506, including recording and videotapes. After he completed his investigation, Moeller submitted a written report to the D.A. and criminal charges were brought against Deputy Funicello. Funicello was charged with a felony but he pleaded guilty to a misdemeanor.

2. [redacted] Testimony:

On or about July 21, 2011, Ms. [redacted] was arrested for drug possession. On or about July 22, 2011 at approximately 3:00 a.m., Ms. [redacted] along with another prisoner (i.e., Mr. [redacted]), who she did not know, were transported to downtown County inmate jails.

Ms. [redacted] had in the past worked as an Emergency Medical Technician and as a nurse. In July 2011, she was in a domestic violence program, and her [redacted] was [redacted]

[redacted] Prior to the transportation, Ms. [redacted] did not know or have any interaction with Deputy Funicello or Appellant.

The next day on July 22, 2012, at approximately 3:00 a.m., Ms. [redacted] began her transport from the Palmdale Station to a downtown inmate facility. A male prisoner (i.e., Mr. [redacted] was also being transported with her to another downtown inmate facility. Ms. [redacted] did not know the male prisoner's name. They were both placed in the rear seat of the patrol car. Ms. [redacted] got into a verbal altercation with the male prisoner (i.e., Mr. [redacted] because he was making sexual comments to Ms. [redacted]

During this trip, Deputy Funicello was driving the patrol car and Appellant was sitting in the passenger seat. Also, during the trip, Mr. [redacted] was not only making sexual comments to Ms. [redacted] but also, he was yelling and being argumentative toward

Funicello. Due to Mr. [redacted] verbal remarks, the Deputies were making statements to Mr. [redacted] attempting to make him stop. Funicello called Mr. [redacted] racial slurs such as, "coon" and told him to "shut the fuck up." Also, Appellant told him to "shut the fuck up." Between the two, Funicello was much more vocal toward Mr. [redacted]

Within approximately 20 to 25 minutes into the transport ride, Deputy Funicello moved the patrol car from the freeway carpool lane to the right shoulder lane on the freeway. After stopping the car, Funicello got out and walked to the rear back door and opened it and starting hitting Mr. [redacted] Ms. [redacted] saw Funicello shove and strike Mr. [redacted] at least 8 times. While Funicello was hitting Mr. [redacted] he was leaning into the car wherein Funicello's head, shoulders, and arms were in the rear seat area. Also, while he was being hit, Mr. [redacted] was pushing into Ms. [redacted] who was sitting next to him. During this assault, Mr. [redacted] as well as Ms. [redacted] were handcuffed. Also, during this time, Appellant placed [redacted] outside the patrol car. Specifically, Appellant placed Ms. [redacted] behind the patrol car facing the traffic. For approximately 2 to 10 minutes outside the patrol car, Ms. [redacted] stated that she could see everything that was going on in the rear seat because she was turning her head to look at the rear seat. While she was standing outside the rear of the car, Appellant went to the passenger rear seat and he leaned in and started to punch Mr. [redacted] in the face. During this assault, Mr. [redacted] was yelling and crying. After the assault, Appellant placed Ms. [redacted] back in the car. Ms. [redacted] saw some blood on Mr. [redacted] eyebrow and lip and a knot on his forehead although he was not bleeding profusely. While seated in rear seat, Ms. [redacted] told Mr. [redacted] to report it because what they did was wrong.

Ms. [redacted] was dropped off first at a women's inmate facility. While dropping her off, the Deputies said to her that she didn't see anything and it would not be good for her if she did. Also, they apologized to her.

On or about July 28, 2011, Ms. [redacted] filed a harassment complaint against the Palmdale Sheriff's Station. Ms. [redacted] complained that she should not have been arrested and that the detectives compromised her safety because they may have informed

her [redacted] that she was cooperating with the detectives. [redacted] Approximately 4 months later, she reported the assault on Mr. [redacted] Ms. [redacted] delayed reporting the assault because her own harassment was her first priority. Also, Ms. [redacted] did not report the assault incident earlier because Palmdale Sheriff Station had harassed her in the past. For example, among other statements, other Deputies at the Palmdale Station told her that she would be picked up whenever they saw her because they were looking for [redacted] In attempting to report the assault, Ms. [redacted] called the FBI. At some point she was referred to the internal affairs unit at the Palmdale Sheriff Station. Sergeant Moeller interviewed Ms. [redacted]

3. Chief Jacques LaBerge's Testimony:

Chief Jacques LaBerge (Chief) is the Division Chief for the North Patrol Division. He has worked for the County for 29 years. The following are a chronological list of his promotions: Sergeant [redacted] Lieutenant [redacted] Captain [redacted] Commander [redacted] and Chief (2012).

The Chief knows Appellant because he was assigned to the Chief's Division. The Chief was the decision maker in Appellant's dismissal. This case involved a series of investigations: (1) initial complaint investigation; (2) criminal investigation; and (3) internal investigation. Prior to rendering his final decision to discharge, the Chief reviewed all the investigation documents. In reviewing this case, the Chief discussed the strengths, weaknesses, and the disciplinary policies with the Department commanders.

Initially, the department sent Appellant a letter of intent to discharge. (DE 1) Thereafter, the Chief met with Appellant and Appellant's attorney to listen to their responses or defenses to the charges. As the final decision maker, the Chief could have changed the decision to discharge Appellant, however, he did not change the decision to discharge. To that end, the Chief issued Appellant an imposition letter notifying Appellant that he was discharged. The Chief's decision to discharge was based on the totality of the circumstances. Also, at the Skelly meeting, Appellant acknowledged that he should have

handled the situation differently. The Chief realized that Appellant was put in an uncomfortable position due to Deputy Funicello's assault on an arrestee, however, Appellant was required, but failed to: (1) stop the assault; and (2) report the assault. Also, Appellant was not forthright during the investigation in this matter. Further, the Chief reviewed Appellant's prior disciplinary history, which revealed that similar to this case at hand, Appellant was [redacted]

Appellant should have conducted himself differently during the incident in question. First, once the patrol car stopped and upon seeing Deputy Funicello exit the car and go to the rear driver side door, he became aware that Funicello was assaulting Mr. [redacted] At that point, Appellant had a duty to stop the assault, however, he chose to pretend that the assault did not occur. In reviewing the case, the Chief concluded that Funicello, not Appellant, used force upon Mr. [redacted] Second, Appellant had a duty but failed to report the assault or use of force upon Mr. [redacted] The Chief noted that throughout Appellant's career with the County, including patrol school, Appellant had received numerous training in reporting use of force. Third, based on the totality of circumstances, even if Appellant says that he didn't see anything, he should have reported the incident in question to his supervisor. Fourth, Appellant should have stopped Funicello from using derogatory language and racial epithets towards Mr. [redacted] Also, Appellant should have reported Funicello's inappropriate language to his supervisor. However, in the investigation, Appellant stated that he did not hear Funicello use derogatory language towards Mr. [redacted] Although not admitted by Appellant, the Chief determined that Appellant also used derogatory language towards Mr. [redacted] In reviewing the case, the Chief concluded that Appellant only used derogatory or course language towards Mr. [redacted] not racial epithets. A Deputy cannot use derogatory or course language in an attempt to stop a prisoner who is loud or obnoxious. If a Deputy uses inappropriate language, the Department will take appropriate action against the Deputy.

There may be an improper belief in the Department that if a Deputy submitted a report against a fellow Deputy that the reporting Deputy will be retaliated against. Regardless of this belief, a Deputy has a duty to submit a report against another Deputy if the situation calls for it, such as reporting use of force. In this type of situation, the Department has a firm policy against such retaliation, and will discipline anyone engaging in said retaliation. Accordingly, any fear of retaliation does not mitigate or prevent a Deputy from submitting a report against a fellow Deputy.

In summation, this is a discharge for various reasons. First, a Deputy must protect those in custody. Second, a Sheriff is in a position that must maintain public trust, integrity, and ethical objective to do the right thing. Third, Appellant failed to provide truthful statements during the investigations. Fourth, Appellant has a [redacted] This type of conduct, which attempts to ignore the use of force, is completely against the core values of the Sherriff's Department. Fifth, at this time, Appellant is a significant liability risk because he has failed to appropriately report use of force on two separate occasions and has failed to be forthright during two investigations. Finally, Appellant's conduct has violated numerous policies as outlined in the documentation.

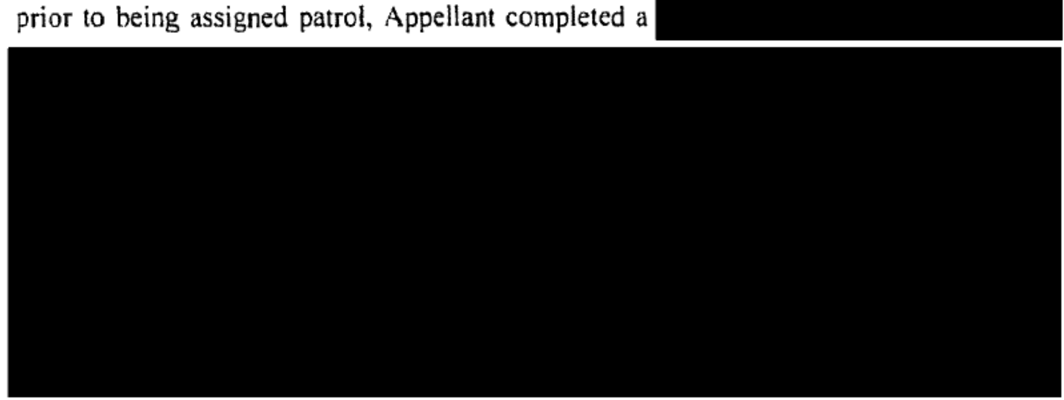
4. [redacted] Testimony:

[redacted] (Deputy [redacted] or [redacted]) is a Los Angeles County Deputy Sheriff. Deputy [redacted] has been employed by the County for six years, and has been assigned to the Palmdale Sheriff Station since 2010. [redacted] knows Appellant. They were both assigned the morning shift for approximately 1½ years, however, they worked in separate cars. Nonetheless, they would back up each other. Also, [redacted] once went to a demolition derby with Appellant, and has been to Appellant's house on one occasion. [redacted] described Appellant's character as truthful and honest.

If Deputy [redacted] sees another Deputy engage in excessive force, he would report it. However, [redacted] believes that he does not have an obligation to report a suspicion of excessive force. Notwithstanding the above, [redacted] would not stick his head in the sand to avoid seeing excessive force.

5. David Shea's (Appellant) Testimony:

In 2006, Appellant started the academy, and thereafter he started working in a County jail facility. In 2007, at the Lancaster Station, he was assigned to patrol. As with all Sheriffs, prior to being assigned patrol, Appellant completed a [redacted]



On July 21, 2011, Appellant was working with Deputy Funicello. They were assigned to ride in the same patrol car. Prior to July 21, 2011, Appellant had only worked with Funicello for a few weeks. Appellant, however, did have a sense of how Funicello conducted himself on various calls. On July 21, 2011, they got a call to show up at the Palmdale Station to pick up two prisoners and transport them to downtown jail facilities. After they arrived at the Palmdale Station, they received paperwork stating that the prisoners were being transported for medical issues. One prisoner was named Mr. [redacted] and he was a [redacted] in his early [redacted] The second prisoner was named Ms. [redacted] and she was a [redacted] in her [redacted] Mr. [redacted] was being transported to the Twin Towers downtown Los Angeles facility and Ms. [redacted] was transported to a female facility in Lynwood. Both inmates were handcuffed behind their back and placed in the back seat of the patrol car and seat belted.

Deputies Funicello and Appellant began driving the prisoners. Funicello was driving the patrol car and Mr. [redacted] was sitting behind him in the back seat. Appellant was sitting in the front passenger seat and Ms. [redacted] was seating behind him in the back seat. For the first few minutes, there was no incident, however, Mr. [redacted] began yelling out of turn for no apparent reason. In short, he was yelling the F-word really loud and boisterous. Since Mr. [redacted] was just yelling the F-word for no reason, Appellant believed that Mr. [redacted] was a "little off." Mr. [redacted] was also talking to and yelling at Ms. [redacted] In response, Ms. [redacted] told him to knock it off and to leave her alone. Both deputies were yelling at Mr. [redacted] to shut up and both Deputies used the F-word more than once in attempting to stop Mr. [redacted] from yelling and making harassing comments toward Ms. [redacted] Appellant raised his voice and used the F-word in an attempt to control the situation. Appellant did not use any racially derogatory slurs toward Mr. [redacted] and he did not hear Funicello use any racial slurs toward Mr. [redacted]

Approximately thirty minutes into the ride, Deputy Funicello pulled over and stopped the car. Appellant didn't know why Funicello stopped the car, but prior to stopping, Mr. [redacted] seemed to become more escalated in his inappropriate behavior. Also, Appellant heard a seat belt unsnap or slap against the plastic seating in the back seat. Immediately after Appellant heard the seat belt, Funicello abruptly pulled over to the right side of road or shoulder area. It was approximately 2:00 a.m. and it was dark outside. When Funicello pulled over, neither he nor Appellant said anything.

Once pulled over, Deputy Funicello immediately exited the patrol car. Upon seeing Funicello exit the car, Appellant immediately exited the car. Appellant did not look in the back seat prior to exiting because Funicello seemed like he was in a hurry to get somewhere and Appellant wanted to be where his partner was going. Appellant, however, did not know what Funicello was thinking or what he was going to do.

After exiting the patrol car, Deputy Funicello went to the driver's side back seat and opened the back door and leaned into the area where Mr. [redacted] was seated. (AE 1A and B) Immediately thereafter, Appellant walked around the backside of the car and stood

behind Funicello. (AE 1C) In doing so, Appellant could not see Funicello's hands or Mr. [redacted] because Funicello was leaning into the car and Funicello's hands and Mr. [redacted] body were blocked by Funicello's body. Also, it was dark outside which limited Appellant's view. Appellant did hear Funicello yelling at Mr. [redacted] to shut up and knock it off. Appellant did not see any fight or struggle between Funicello and Mr. [redacted] and it didn't appear that Funicello needed any assistance. To that end, Appellant only stood behind Funicello for only a few seconds. Appellant then wanted to check on the welfare of Ms. [redacted] and he walked to the other side of the car and opened the rear door and asked her if she was okay. Although she was still handcuffed, Ms. [redacted] began to step out of the car when Appellant opened her door. In response, Appellant told her that she could not exit the car. Accordingly, Appellant did not take Ms. [redacted] out of the car and Ms. [redacted] was wrong when she testified that she was taken out of the car. Afterwards, both Funicello and Appellant got in the car and they again started driving on the freeway. Funicello did not appear to be flush or breathing hard. Neither Funicello nor Appellant said anything about the incident to each other because there was nothing to say. Everything seemed to be well and both Mr. [redacted] and Ms. [redacted] were quiet during the rest of the ride.

The Deputies agreed to first drop Ms. [redacted] off at the Century women's jail facility. Appellant escorted and processed Ms. [redacted] into this jail facility. While being processed, Ms. [redacted] said to Appellant, "Hey, whatever happened, I'm cool with." Based on Ms. [redacted] statement, at some point Appellant formulated an opinion that she was speaking about pulling over to the side of the road and Deputy Funicello entering the back seat and something improper occurring between Funicello and Mr. [redacted] Appellant, however, never heard Mr. [redacted] yell or scream out in pain when Funicello was leaning into the back seat. Also, when the Deputies got back into the patrol car they drove Mr. [redacted] to his jail facility without any incident, that is, Mr. [redacted] was not yelling or using profanity. Appellant did not know why Mr. [redacted] stopped yelling and using profanity after Funicello pulled over and went into the back seat.

Both Deputies escorted and processed Mr. [redacted] into the men's jail downtown. Appellant did not notice any blood, marks or bruises on Mr. [redacted] Mr. [redacted] did not say anything to the deputies while being processed.

Prompted by Ms. [redacted] complaint that Mr. [redacted] was assaulted, Lieutenant Clay did an initial investigation into this matter. Lieutenant Clay spoke to Deputy Funicello but did not speak with Appellant. Funicello spoke with Appellant about the incident in question. Appellant maintains that other than Funicello, he only spoke with the ICIB investigator on January 6, 2012. Appellant believes that he is not obligated to report a suspected use of force. Shea maintains that he will only report a use of force if he uses it or sees it. In the past, Appellant was suspended for five days for failing to report that he used force to control an inmate. Appellant was under the mistaken belief that he was not required to report a use of force in a "control hold" situation wherein he pulled an inmate's arm behind his body to get him in control.

During the incident in question, Appellant never heard Deputy Funicello use the words "nigger" or "coon." Appellant also did not remove Ms. [redacted] from the patrol car. Further, Appellant did not witness Funicello use reportable force on Mr. [redacted] From what Appellant saw, he could have concluded that Funicello was refastening Mr. [redacted] seat belt and not that Funicello was hitting Mr. [redacted] During the incident in question, however, Appellant did witness that Funicello was very excited and angry with Mr. [redacted] and Funicello was close to the proximity of Mr. [redacted] face, that is, face-to-face. During this time, Appellant heard and saw that Funicello was yelling at Mr. [redacted] to shut up, knock it off, and to leave Ms. [redacted] alone.

Appellant confirmed that it was his understanding that he is only to report use of force when he uses it or he sees it. For example, if he sees an officer with a baton over his head at one point and later on sees a welt of a prisoner's arm, he would not report that he saw the officer hit the prisoner but he would report only what he observed.

Appellant suspected that something had happened between Deputy Funicello and Mr. [redacted] after Ms. [redacted] talked to him while she was being processed for jail and she said to him, "Hey, whatever happened, I'm cool with." Although the suspicion was fresh on his mind, he purposely did not follow up with Ms. [redacted] on that day because he didn't want to know what happened between Funicello and Mr. [redacted] Appellant admits that he should have dug dipper with Ms. [redacted] to determine if Funicello engaged in misconduct. Appellant stated that he should have reported it but he was not exactly sure what happened. Also, Appellant didn't what to put himself out there and get Funicello in trouble for something that may not have happened.

During the incident in question, Mr. [redacted] was handcuffed and he was just mouthing off and it would be inappropriate to strike a handcuffed prisoner for just mouthing off. To that end, if Deputy Funicello had hit Mr. [redacted] it would have been unlawful. Appellant has an obligation to uphold the law and protect Mr. [redacted] and to ensure that proper steps are taken with him. Prior to and on the day in question, Appellant knew that Funicello had a reputation for being a hothead. [redacted] Appellant confirmed that he knew that Funicello was angry that day at Mr. [redacted] Appellant knew that Funicello was angry when he jumped out of the car and went to the back seat to deal with Mr. [redacted] because Mr. [redacted] had been mouthing off for thirty minutes. At that moment, Appellant was concerned with the situation. When Appellant was escorting Mr. [redacted] to the downtown jail facility, he didn't closely physically examine Mr. [redacted]

Appellant admits that he should have brought up what had happened between Deputy Funicello and Mr. [redacted] to someone but he didn't. Appellant admits that the fear of retaliation in this case stopped him from reporting Funicello. Appellant admits that this fear of retaliation stopped him from doing the right thing that is, reporting the incident in question.

Although there are appropriate protocols and measures to protect against retaliation, Appellant believes that there is really no way the Department can protect a Deputy. Even if the Deputy who reported the incident moves to another station, everyone will know that said Deputy told on someone. Appellant, however, admits that his job is to protect and do the right thing no matter the situation. Appellant stated that it is not proper to turn a blind eye in an attempt to avoid seeing an officer use force but rather he could look at the totality of the circumstances, that is, put two-and-two together and conclude that force was used. Appellant stated that he didn't put two-and-two together at that moment on the side of the freeway, but after speaking with Ms. [redacted] at the jail facility and knowing that Funicello was in the back seat yelling the F-word in Mr. [redacted] face, Appellant did put two-and-two together at that time although he didn't know if Funicello punched Mr. [redacted]

6. [redacted] Testimony:

The Los Angeles Sheriff's Department employs Mr. [redacted] as a Deputy Sheriff. Deputy [redacted] ([redacted]) has been a Deputy for [redacted] years. For the past [redacted] years, he has been assigned as patrol officer working out of the Palmdale Station. [redacted] knows Appellant because they have worked together in such things as routine calls for service and traffic stops. They have never worked in the same car but they have worked the same shift in sister cars. Based on their working relationship, [redacted] opinion is that Appellant is very honest and truthful.

## DISCUSSION

### Are the allegations in the Department's August 2, 2013 letter true?

In 2006, Deputy David Shea (Appellant) started working for the County of Los Angeles. Appellant held the position of a Deputy Sheriff for the Sheriff's Department (Department). (DEs 1-3; Testimony of Appellant: VII, pgs. 209, 210)

In a letter dated August 2, 2013, the Department discharged Appellant from his position as Deputy Sheriff from County service. (DEs 1-3; Testimony of Chief LaBerge: VII, pgs. 173-176) The basis for the discharge was separated into the following three areas:

1. On or about July 21, 2011, while on duty, Appellant failed to conform to the standards established for Appellant's rank or position as a Deputy Sheriff when Appellant failed to safeguard and treat Mr. [redacted] and Ms. [redacted] in a respectful, courteous, and civil manner as Appellant yelled at and directed derogatory language toward Mr. [redacted] an inmate in the custody of Sheriff's Department who was suffering from mental illness. Also, Appellant failed to use reasonable judgment and exercise the integrity expected of a Deputy Sheriff and seek out assistance from a supervisor when Appellant knew or should have known Deputy Funicello used unnecessary and excessive force against Mr. [redacted] as Mr. [redacted] was handcuffed and seated in the rear seat of a patrol car, and under Appellant's control and custody. Further, Appellant failed to report to a Department supervisor, and/or document the circumstances in which Appellant witnessed the use of force against Mr. [redacted] and/or failed to obtain medical treatment for Mr. [redacted] after realizing Mr. [redacted] was assaulted. Appellant's conduct was in conflict with the Department's Core Values as Appellant failed to perform his duties, which included, but is not limited to:

a. using and/or directing profanities at Mr. [redacted] and/or telling Mr. [redacted] to "shut the fuck up;" and/or

b. failing to recognize that Mr. [redacted] was suffering from a mental illness and appropriately addressing Mr. [redacted] behavior in accordance to the standards, protocols and expectations of the Department; and/or

c. failing to safeguard Mr. [redacted] who was handcuffed and in custody when Deputy Funicello assaulted him; and/or

d. placing Ms. [redacted] who was in custody of the Sheriff's Department, outside of the patrol car, unattended on a multi-lane highway, handcuffed, and facing away from the patrol car as Appellant entered the rear seat portion of the patrol care to assist Deputy Funicello; and/or

e. failing to contact a supervisor and/or report the use of force after admitting "I thought it was possible;" and/or

f. exercising poor judgment, and/or not wanting to make ripples, and/or not wanting to be labeled as a snitch, when deciding not to report the use of force incident

after surmising the incident was something which had escalated out of policy. (DEs 1-3; Testimony of Chief LaBerge: VII, pgs. 173-176)

Pursuant to the August 2, 2013 letter, the Appellant's above misconduct allegedly violated the following Manuel of Policy and Procedures Sections:

- 3-01/030.05: General Behavior; and/or
- 3-01/000.10: Professional Conduct; and/or
- 3-01/030.10: Obedience to Laws, Regulations, and Orders [as it pertains to 5-09/430.00, Use of Force Reporting]; and/or
- 3-01/030.15: Conduct Toward Others; and/or
- 3-01/050.10: Performance to Standards; and/or
- 3-01/040.97: Safeguarding Persons in Custody; and/or
- 3-01/030.85: Derogatory Language (DEs 1-3, 6; Testimony of Chief LaBerge: VII, pgs. 173-176)

2. On or about January 6, 2012, Appellant failed to make full, complete, and/or truthful statements, and/or made false statements during a Departmental investigation as evidenced by, but not limited to:

a. failing to provide a complete account of Deputy Funicello's actions and Appellant's actions when Funicello stopped the patrol car and confronted Mr. [redacted] by stating Funicello was yelling at the person and/or Appellant opened the female's door and asked if she was okay, and/or stating "that's the whole story," and/or stating "geez what happened? I don't want to know," and/or

b. stating Appellant never entered in the back seat of the patrol car after it was stopped on the freeway; and/or

c. stating "She never got out. I took her out, stood her up, nothing like that." "No. Stayed in the car," when ask if Appellant removed Ms. [redacted] from the patrol car while it was stopped; and/or

d. stating "we got out simultaneously and I went over there," when asked if Appellant saw anything going on in the back seat of the patrol car; and/or

e. stating "She started to jump out and then I'm like, no, it's cool. It's cool. Stay there," and/or words to that effect, in an attempt to explain whether Appellant removed Ms. [redacted] from the patrol car when it stopped on the freeway; and/or

f. stating "No" when asked if Appellant and Funicello talked to Ms. [redacted] when Appellant arrived at the downtown jail facility regarding the incident in the rear seat of the patrol car when it stopped on the freeway; and/or

g. stating "I didn't want anything to do with it, and I didn't try to see because I didn't want to see," and/or words to that effect; and/or

h. stating "I know I am at this point, but what happened between him and that suspect in the back seat is his business because he was there. He was the one involved. I, fortunately, from I, I consider myself fortunate not to see what had occurred," and/or words that effect. (DEs 1-3; Testimony of Chief LaBerge: VII, pgs. 173-176)

Pursuant to the August 2, 2013 letter, the Appellant's above misconduct allegedly violated the following Manuel of Policy and Procedures Section:

• 3-01/040.75: Failure to Make a Statement and/or Making False Statements During Departmental Investigations (DEs 1-3, 6; Testimony of Chief LaBerge: VII, pgs. 173-176)

3. On or about January 17, 2013, Appellant failed to make full, complete, and/or truthful statements, and/or made false statements during a Departmental investigation as evidenced by, but not limited to:

a. stating Appellant did not hear Deputy Funicello use the words nigger and/or coon; and/or

b. stating that Appellant never removed Ms. [redacted] from the patrol car when Funicello stopped the car on the freeway and confronted Mr. [redacted] and/or

c. stating Appellant did not witness Funicello use reportable force on Mr. [redacted] (DEs 1-3; Testimony of Chief LaBerge: VII, pgs. 173-176)

Pursuant to the August 2, 2013 letter, the Appellant's above misconduct allegedly violated the following Manuel of Policy and Procedures Section:

• 3-01/040.75: Failure to Make a Statement and/or Making False Statements During Departmental Investigations (DEs 1-3, 6; Testimony of Chief LaBerge: VII, pgs. 173-176)

This is a simple factual case, however, the facts in question are disputed. As will be discussed below, the Department primarily alleges that Appellant failed to safeguard and report the use of force by Deputy Funicello on a male prisoner and when the investigation ensued, Appellant made dishonest statements during the course of an official investigation. In response to the above allegations, Appellant admits: (1) that he should have reported his observations, even though they amounted to a suspicion: (2) that he made a bad decision in not reporting based on Appellant's fear of retaliation; and (3) that fear of retaliation does not relieve him of the obligation to report what he observes. Appellant, however, denies that he made any dishonest statements during the investigation. Pursuant to Appellant's responses, which included his denial that he made false statements, the direct and circumstantial evidence established that the primary allegations in the Department's August 2, 2013 letter are true. (DEs 1-3)

In 2006, Appellant started working as a Deputy Sheriff. Prior to being assigned to patrol, Appellant worked in the jail facility for approximately six months. In the jail, he had an occasion to use a "control hold" on an inmate, and he did not report it to his supervisor. Although he was required to report this use of force, he did not understand the policy and thought a "control hold" (i.e., he pulled an inmate's arm behind his body to get him in control) did not have to be reported. Appellant was disciplined for five days for failing to report. (DEs 6 – 4/5-4/14, 8 – 221; Testimony of Sergeant Moeller: VI, pg. 87; Chief LaBerge: VII, pgs. 178, 188; and Appellant: VII, pgs. 209, 210)

Prior to being assigned patrol, Appellant completed a three-week patrol-training course. Appellant worked patrol for about a month, however, he voluntarily reenrolled himself in another three-week patrol-training course because he felt he was not ready to be a patrol officer at that time. Specifically, Appellant felt that he was not prepared in various matters such as, he wanted to participate in more ride-alongs prior to being assigned

patrol duties. Also, use of force reporting is taught in patrol school. After completing a second patrol-training course, he started working as a patrol officer in 2010. (DEs 6 – 4/5-4/14; Testimony of Chief LaBerge: VII, pgs. 183, 184; and Appellant: VII, pgs. 210, 211, 213)

On or about July 21, 2011, Appellant had been working with Deputy Funicello for a few weeks when they were given the assignment to transport two prisoners from Palmdale to Los Angeles. The male prisoner (Mr. [redacted] was being transported to a men's jail, and the female prisoner (Ms. [redacted]) was being transported to a women's jail. Although it was only a few weeks, Appellant had knowledge of how Funicello conducted himself on various calls. Indeed, Appellant knew that Funicello had a reputation for being a hothead. In fact, Appellant was warned that Funicello used a lot of force, and was subject to a "force review" for repeated use of force. (DEs 6 – 4/5-4/14, 8 – 35, 36, 39, 40, 68, 90-106, 164, 219, 270, 271, 302; Testimony of Sergeant Moeller: VI, pgs. 19-21; Ms. Galaviz: VI, pgs. 92, 96, 99, 100; and Appellant: VII, pgs. 213-217, 265, 266)

On July 22, 2011, at approximately 2:00 am to 3:00 am, pursuant to their assignment to transport the two prisoners, the deputies picked up Mr. [redacted] and Ms. [redacted] and handcuffed and seat belted them in the back seat of the patrol car. Mr. [redacted] was seated behind Deputy Funicello, the driver, and Ms. [redacted] was seated behind Appellant, the front seat passenger. (DE 8 – 35, 36, 39, 40, 68, 90-106, 163, 164, 167, 168, 170, 271, 305; Testimony of Sergeant Moeller: VI, pgs. 19-21; Ms. [redacted] VI, pgs. 92, 96, 98-100; and Appellant: VII, pgs. 214-217, 219, 225, )

The two Deputies began driving on the freeway toward Los Angeles. During this drive, Mr. [redacted] started cursing and yelling to himself and also bothering Ms. [redacted] with sexual comments. Deputy Funicello and Appellant used profanity toward Mr. [redacted] to stop his verbal behavior. In fact, during the drive, both Deputies used profanity towards him such as, "shut the fuck up" in an effort to meet profanity with profanity to assert some control and command over Mr. [redacted] Notwithstanding, Appellant's rationale for using profanity, Chief LaBerge testified credibly that Appellant used inappropriate

derogatory or course language towards Mr. [redacted] Chief LaBerge testified credibly that a Deputy, like Appellant, cannot use derogatory or course language in an attempt to stop a prisoner who is loud or obnoxious. Accordingly, if a Deputy such as, Appellant, uses inappropriate language (i.e., shut the fuck up), the Department may take appropriate disciplinary action. (DE 8 – 22, 90-106, 276; Testimony of Sergeant Moeller: VI, pgs. 19-22, 27, 85, 185, 188, 214; Ms. [redacted] VI, pgs. 92, 96, 99, 100, 102, 145; Chief LaBerge: VII, pgs. 180, 181, 191, 193, 194; and Appellant: VII, pgs. 218-221, 223)

Deputy Funicello however, also used the following racial derogatory epithets toward Mr. [redacted] an African American: nigger and coon. During the Department's investigation and in this hearing, Appellant claims that he did not hear Funicello use the words nigger or coon. Appellant's claim is not credible in that two witnesses who were in the same car with Appellant (i.e., Mr. [redacted] and Ms. [redacted], who do not know each other and have not spoken since the day of incident, are consistent that Funicello stated the above derogatory racial epithets toward Mr. [redacted] during the drive. In fact, similar to Appellant's assertion that the Deputies wanted Mr. [redacted] to stop, Ms. [redacted] stated that Funicello was much more vocal than Appellant and he called Mr. [redacted] a coon during the drive. Accordingly, it is not credible that Appellant did not hear Funicello state the racial epithets because all the individuals where in the same car. (DE 8 – 22, 33-35, 50, 90-106, 102; Testimony of Sergeant Moeller: VI, pgs. 19-22, 27, 85; Ms. Galaviz: VI, pgs. 99-101; Chief LaBerge: VII, pgs. 180, 181, 191, 193, 194; and Appellant: VII, pgs. 215, 223, 258)

After about thirty minutes of Mr. [redacted] yelling, Appellant testified that he heard what he believed to be a seat belt being unbuckled. Almost immediately Deputy Funicello moved the patrol car from the freeway carpool or left lane and pulled the car to the right shoulder freeway lane. Appellant testified that he knew that Funicello was angry that evening. Appellant acknowledgement is vital in this case because Appellant was or should have been on high alert as to Funicello's behavior because he was not only angry, but also, he was a known hothead and was being investigated for repeated use of force. After pulling over, Funicello exited the patrol car and opened the back passenger door

where Mr. [redacted] the handcuffed prisoner was sitting. At that point, Funicello leaned into the back seat and began hitting Mr. [redacted] Both Mr. [redacted] and Ms. [redacted] confirmed credibly that Funicello hit Mr. [redacted] approximately six to eight times. Also, Mr. [redacted] believed that he was "beat up" by Funicello for talking. It goes without saying, but was also confirmed by Appellant, that Appellant had an employment duty or obligation to protect Mr. [redacted] from Funicello and also, that it was unlawful to strike Mr. [redacted] a handcuffed prisoner, for merely "mouthing off." In this case, Appellant failed to stop the attack or intervene upon the suspicion of use of force, and thus he failed to protect Mr. [redacted] from Funicello. It should be noted that Funicello was criminally prosecuted for his unlawful behavior. In short, Funicello was charged with a felony but plead to a misdemeanor. (DE 8 – 9, 40-43, 48, 50, 51, 52, 72, 73, 77, 78, 90-167, 185, 188, 276-278, 282, 283, 293, 294, 305; Testimony of Sergeant Moeller: VI, pgs. 12, 18, 19-22, 25, 35, 36, 47, 57, 58, 85; Ms. [redacted] VI, pgs. 92, 96, 99, 100, 102-104, 109, 112, 118, 127, 133, 145-147; Chief LaBerge: VII, pgs. 177, 179-182, 187, 188; and Appellant: VII, pgs. 219, 224-229, 260, 263, 264, 265, 266, 267, 275, 507-515)

This beating incident lasted approximately three to five minutes. During this time, to back up his partner, Appellant got out of the car and also walked around the back of the car to the driver's side where he saw that the back seat door was open and that Funicello's body was leaning into the car with one leg off the ground. Appellant was standing behind Funicello while Funicello was leaning into the back seat. In fact, as a result of the situation of Funicello leaning into the back seat, Appellant properly had his eyes on Funicello even though Funicello's body filled most of the back door opening. Also, Funicello was not being pushed or pulled into or out the backseat door. While this was occurring, as described in more detail below, Appellant wrongly testified that he did not know that Funicello was hitting Mr. [redacted] Thus, Appellant has not only made false statements at this hearing and during the Department's investigation, but as described in more detail below, Appellant's denial is also irrelevant based on Appellant's admission during his testimony. (AEs 1-A – E; DE 8 – 40-43, 48, 50-52, 72, 73, 77, 78, 90-106, 176, 178, 283; Testimony of Sergeant Moeller: VI, pgs. 12, 18, 20, 22, 25, 35, 36, 44-47, 77, 78, 84, 85, 88, 89; Ms. [redacted] VI, pgs. 92, 96, 99, 100, 102-104, 109, 112, 118, 127,

133, 145-147; Chief LaBerge: VII, pgs. 176, 177, 179, 180, 181, 182, 187, 188, and Appellant: VII, pgs. 226, 229-233, 237, 244, 252, 258, 259)

During this beating incident, upon seeing that Deputy Funicello was not in danger and seemed to have the situation under control, Appellant walked around the back of the car to the back seat passenger side of the car where Ms. [redacted] was seated and opened her door. Appellant admitted that he wanted to check on the welfare of Ms. [redacted] and he asked her if she was okay. Although it is circumstantial evidence, Appellant feeling the need to "check on" Ms. [redacted] confirmed that at minimum he knew something inappropriate occurred between Funicello and Mr. [redacted] or at maximum, he realized that Ms. [redacted] may have been injured or shaken up after she witnessed the assault. Either way, Appellant knew something inappropriate happened in that back seat and he: (1) failed to stop the improper use of force or intervene upon the suspicion of use of force by Funicello; (2) failed to report this use of or reasonable suspicion of use of force. Although she was handcuffed, Ms. [redacted] began to step out of the car when Appellant opened the door but he motioned to her to stay in the car and she did so. Funicello and Appellant returned to their seats and Mr. [redacted] was silent for the rest of the ride. (AEs 1A – E; DEs 8 – 40-43, 48, 50-52, 72, 73, 77, 78, 90-106, 163, 177, 196, 277, 283, 285, 303, 304, 307, 308; Testimony of Sergeant Moeller: VI, pg. 36; Ms. [redacted] VI, pgs. 112, 113; and Appellant: VII, pgs. 233-236, 252, 268)

Ms. [redacted] was dropped off first at the women's jail. Appellant escorted and processed Ms. [redacted] into this jail facility. While being processed, Ms. [redacted] said to Appellant, "Hey, whatever happened, I'm cool with." Based on Ms. [redacted] statement, Appellant formulated an opinion that Ms. [redacted] was speaking about pulling over to the side of the road and Deputy Funicello entering the back seat and something improper occurring between Funicello and Mr. [redacted] As described in more detail below, at this time, Appellant admitted during his testimony that he had reasonable suspicion to report Funicello's misconduct but failed to do so because he feared retaliation. Appellant further admits that this fear of retaliation was not a proper excuse for failing to report. (DEs 8 – 163, 164, 192, 200, 285, 305; Testimony of Sergeant Moeller: VI, pgs. 77, 78,

84, 88, 89; Ms. [redacted] VI, pgs. 113, 114; Chief LaBerge: VII, pgs. 179, 181, 187, 188, 194-198; and Appellant: VII, pgs. 216, 217, 241-243, 249, 263, 264, 270, 273-277)

Thereafter, both Deputies escorted and processed Mr. [redacted] into the men's jail downtown. Appellant did not notice any blood, marks or bruises on Mr. [redacted] however, Appellant did not closely physically examine Mr. [redacted] Also, Mr. [redacted] stated that he was hit in the upper body and head while he was trying to shield himself in the rear seat. Accordingly, based on the credible testimony of Sergeant Moeller, since Mr. [redacted] was hit in the upper body and head, it was not unusual that there were no visual marks. (DE 8 – 40-43, 48, 50-52, 72, 73, 77, 78, 90-106; Testimony of Sergeant Moeller: VI, pg. 87; and Appellant: VII, pgs. 246-248, 249, 270)

During the Department's investigation and in some parts of his testimony, Appellant confirmed his understanding that he is only to report use of force when he sees it. As with his prior discipline, Appellant's understanding is simply incorrect. It is clear, and as later admitted by Appellant, that an officer must also report a suspicion of use of force. For example, if Appellant sees an officer with a baton over his head and sees a welt on a prisoner's arm, Appellant subsequently stated correctly that he would report his suspicion based on what Appellant observed. In turn, this report would initiate an investigation, which would determine based on direct and circumstantial evidence whether use of force occurred. However, without a report, an investigation would not have occurred and possible inappropriate or illegal conduct would not have been discovered. (DEs 6 – 4/5-4/14, 8 – 40-43, 48, 50-52, 72, 73, 77, 78, 280, 285, 294, 299, 301; Testimony of Sergeant Moeller: VI, pgs. 77, 78, 84, 88, 89; Chief LaBerge: VII, pgs. 177-182, 187, 194-198; and Appellant: VII, pgs. 253, 254, 260, 261, 263, 264)

Based on the direct and circumstantial evidence as noted herein, on or about July 22, 2011, Appellant saw or should have seen, Deputy Funicello hitting Mr. [redacted] after Funicello pulled over and exited the patrol car and opened the back passenger door where Mr. [redacted] was sitting. Also, for the reasons stated herein, at minimum, Appellant had suspicion of Funicello's use of force. First, Appellant had prior knowledge that Funicello

was a hothead and had a propensity for using force. In fact, Appellant admitted that Funicello was in an angry state when he exited the car and confronted a handcuffed Mr. [redacted] To that end, when Funicello leaned into the back seat and inflicted approximately eight blows to Mr. [redacted] upper body and head, Funicello's violent conduct was seen or should have been seen by Appellant. Indeed, Appellant testified that he was standing right behind Funicello when the blows were taking place. Appellant even concluded that he personally saw that Funicello was not in danger and seemed to have the situation under control. Based on the direct and circumstantial evidence herein and as stated below, Appellant saw or should have seen Funicello hit Mr. [redacted] Also, at minimum, Appellant had suspicion of Funicello's use of force. Thus, Appellant should have but failed to safeguard Mr. [redacted] when Funicello was hitting him and he failed report the incident in question. (DE 8 – 40, 41-43, 48, 50-52, 72, 73, 77, 78, 90-106, 176, 178, 185, 188, 193-195, 199-203, 210-213, 277, 278, 280-283, 285, 293, 299, 302, 304; Testimony of Sergeant Moeller: VI, pgs. 12, 18, 20, 25, 36, 46, 47, 77, 78, 84, 88, 89; Ms. [redacted] VI, pgs. 99-104, 109, 112, 118, 127, 133, 145-147; Chief LaBerge: VII, pgs. 177, 179-182, 187, 188, 194-198; and Appellant: VII, pgs. 213-215, 225-237, 252, 260, 263-268; 275)

Second, after Funicello had finished hitting Mr. [redacted] Appellant admitted, as confirmed by Ms. [redacted] that Mr. [redacted] inexplicably spent the rest of the ride to the downtown jail in silence. This silence from a prisoner who just minutes before would not stop yelling as well as the other facts (e.g., Funicello's hothead reputation and use of force review) is telling because Mr. [redacted] silence must have made Appellant conclude that Funicello had done something serious to Mr. [redacted] (e.g., hit) and was not merely fastening the seat belt for Mr. [redacted] However, despite this strong circumstantial evidence, Appellant admitted that he intentionally failed to follow up or conduct any inquiry into the wellbeing of Mr. [redacted] Based on the direct and circumstantial evidence herein, Appellant saw or should have seen Funicello hit Mr. [redacted] Also, at minimum, Appellant had suspicion of Funicello's use of force. Thus, Appellant should have but failed to safeguard Mr. [redacted] when Funicello was hitting him and he failed to report the incident in question. (DE 8 – 62, 90-106, 303, 304, 307, 308; Testimony

Sergeant Moeller: VI, pgs. 12, 18, 20, 25, 36, 46, 47, 77, 78, 84, 88, 89, 177, 185, 188; Ms. [redacted] VI, pgs. 99-104, 109, 112, 118, 127, 133, 145, 146, 147; Chief LaBerge: VII, pgs. 177, 179-182, 187, 188, 194-198; and Appellant: VII, pgs. 219, 220, 225, 226, 240, 246, 247, 263, 264, 266, 275)

Third, Appellant testified that he suspected that something might have happened after he escorted Ms. [redacted] to her jail facility based on the comments that she made. Appellant testified that upon arriving at the jail facility, Ms. [redacted] turned to him and said, "Hey, whatever happened, I'm cool with." At that time, Appellant admitted that he "formulated" a conclusion "that she was speaking about pulling over to the side of the road and Funicello entering the back seat and whatever had occurred there." Appellant's characterization of that conversation makes Ms. [redacted] a knowing witness to the event that Appellant incredibly claims he did not see. However, despite this strong circumstantial evidence, Appellant intentional failed to follow up with Ms. [redacted] or conduct any inquiry into the wellbeing of Mr. [redacted] Indeed, Appellant admits that he should have dug deeper and question Ms. [redacted] but he didn't. Based on the direct and circumstantial evidence herein, Appellant saw or should have seen Funicello hit Mr. [redacted] Also, at minimum, Appellant had suspicion of Funicello's use of force. Thus, Appellant should have but failed to safeguard Mr. [redacted] when Funicello was hitting him and he failed to report the incident in question. (DEs 8 – 163, 192, 200, 285, 305; Testimony of Sergeant Moeller: VI, pgs. 12, 18, 20, 25, 36, 46, 47, 77, 78, 84, 88, 89; Ms. [redacted] VI, pgs. 99-104, 109, 112, 118, 127, 133, 145-147; Chief LaBerge: VII, pgs. 177, 179-182, 187, 188, 194-198; and Appellant: VII, pgs. 216, 241-245, 249, 263, 264, 269, 270, 273-277)

Equally as important as to whether or not Appellant saw Deputy Funicello strike Mr. [redacted] is that **Appellant admitted that he obviously should have but failed to report** what had happened between Funicello and Mr. [redacted] For example, Appellant failed to contact a supervisor and/or report the use of force after admitting that he thought it was possible. These direct and circumstantial facts include, but are not limited to: (1) Funicello's reputation as a hothead; (2) Funicello being under force review; (3) Funicello

being angry with Mr. [redacted] (4) Funicello pulling over and immediately leaning into Mr. [redacted] (5) Appellant standing closely behind Funicello, and confirming that he personally saw that Funicello was not in danger and seemed to have the situation under control; (6) Appellant feeling the need to "check on" Ms. [redacted] confirmed that he knew something inappropriate occurred between Funicello and Mr. [redacted] (7) Mr. [redacted] abruptly remaining silent for the duration of the night; and (8) Ms. [redacted] statement to Appellant, which acknowledged that something had occurred in the back seat. Based on the direct and circumstantial evidence herein, **Appellant admitted that he should have reported the incident in question**. (DE 8 – 22, 23, 33-35, 40-43, 48-52, 62, 72, 73, 77, 78, 163, 176, 178, 192-195, 199-203, 210, 211-213, 219, 223, 280, 281, 283, 285, 299, 302-305, 307, 308; Testimony of Sergeant Moeller: VI, pgs. 12, 18, 20, 25, 36, 46, 47, 77, 78, 84, 88, 89; Ms. [redacted] VI, pgs. 99-104, 109, 112, 118, 127, 133, 145, 146, 147; Chief LaBerge: VII, pgs. 177, 179-182, 187, 188, 194-198; and Appellant: VII, pgs. 234, 249, 263, 264, 270, 272-277)

In addition to the above, **Appellant admitted that the fear of retaliation stopped him from reporting the incident between Funicello and Mr. [redacted]** Although there are appropriate protocols and measures to protect against retaliation, Appellant testified that even if a Deputy who reported the incident moves to another station, everyone will know that said Deputy told on someone. Appellant, however, admitted that his job is to protect individuals and do the right thing no matter the situation, including the fear of retaliation. **Appellant admitted that this fear of retaliation stopped him from doing the right thing that is, reporting the incident in question.** Strangely, Appellant admitted that this improper fear of retaliation kept him from reporting that very thing that he claimed he knew nothing about. Despite conceding his obligation to report, he didn't want to be known as a Deputy who "told on somebody." Based on the direct and circumstantial evidence herein, **Appellant admitted that he should have but failed to report the incident in question**. (DE 8 – 22, 23, 33, 34, 35, 40-43, 48, 50-52, 62, 72, 73, 77, 78, 280, 285, 288, 300, 301, 302, 305; Testimony of Sergeant Moeller: VI, pgs. 12, 18, 20, 25, 36, 46, 47, 77, 78, 84, 88, 89; Ms. [redacted] VI, pgs. 99-104, 109, 112, 118, 127, 133,

145-147; Chief LaBerge: VII, pgs. 177, 179-182, 187, 188, 194-198; and Appellant: VII, pgs. 249, 263, 264, 270, 272-277)

Also, Appellant admitted that he suspected that Deputy Funicello engaged in inappropriate conduct, and that he chose not to do anything. Appellant's willful blindness is clearly inappropriate and a violation of Department policies. Appellant simply chose not to see abuse of an inmate; that in and of itself is a violation of his duties and obligations as a Deputy Sheriff. In his responses during the Department's administrative investigations, Appellant confirmed this willful blindness:

- "...I'm trying – wrong or otherwise and maybe bad decision time, I didn't want anything to do with it, and I didn't try to see because I didn't want to see."
- "I mean, I just didn't say that but, like I said, I just didn't want to know." In response, Investigator states: Is that how you live your life? You just kind of go through with blinders? Appellant then states, "No, but with this, it was."
- "No, it's probably wrong. I see that now it's wrong that I was ignorant for what happened, but – "
- "And I've been honest with you to that – I am observant, but I didn't want to observe it. That's what I'm – and that's was wrong obviously. I get that policy whatever, but I didn't want to observe it."
- "...So that point, yeah, I made a determination and it was in retrospect the wrong one not to look, but same time, I didn't want to."
- Investigator states: You chose not to see. Appellant states, "That's exactly why I didn't. Why would I? I mean, I should – and I've admitted that was wrong, yes."
- "...Cause obviously this guy's handcuffed and he's in the seat. Any force at all is gonna be unnecessary, so I chose not to see what was going on."
- Investigator states: you (Appellant) saw Funicello hunched over Mr. Wright, but you didn't see what he was doing, and you kind of made a point not to see what he was doing. Appellant states, "That's correct." (DEs 6 – 4/5-4/14, 8 – 192-194, 199-203, 210-213, 217, 219, 220, 223, 280, 281, 286, 288, 300, 304; Testimony of Sergeant Moeller: VI, pgs. 77, 78, 84, 88, 89; Chief LaBerge: VII, pgs. 177-182, 187, 194-198; and Appellant: VII, pgs. 253, 254, 260, 261, 263, 264)

During this hearing and the Department's investigation, Appellant intimated that if he purposely avoided seeing that reportable force was being used on a prisoner, it would not be reportable. Appellant's testimony and prior investigation statements are not only incorrect but are a concerning gross distortion of the Department's policies. As Chief LaBerge testified, this type of blind eye action is completely antithetical to the notion of public accountability, and one which cannot be tolerated. Even Appellant admitted that it is not proper to turn a blind eye in an attempt to avoid seeing an officer's use of force. (DE 8 – 192-195, 199-203, 210-213, 217, 219, 220, 223, 280, 281, 299, 301, 304; Testimony of Sergeant Moeller: VI, pgs. 12, 18, 20, 25, 36, 46, 47, 77, 78, 84, 88, 89; Chief LaBerge: VII, pgs. 177, 178, 179, 188; and Appellant: VII, pgs. 253, 254, 260, 261, 263, 276, 277)

Also, based upon the above admissions and the direct and circumstantial evidence, on or about January 6, 2012, Appellant failed to make full, complete, and/or truthful statements, during the Departmental investigation as evidence by, but not limited to: (1) Appellant failing to provide a complete account of Deputy Funicello's actions and Appellant's actions when Funicello stopped the patrol car and confronted Mr. [redacted] by stating Funicello was yelling at the person and/or stating, "that's the whole story," and/or stating "geez what happened? I don't want to know;" (2) Appellant stating, "we got out simultaneously and I went over there," when asked if Appellant saw anything going on in the back seat of the patrol car; (3) Appellant stating "I didn't want anything to do with it, and I didn't try to see because I didn't want to see," and/or words to that effect; and (4) Appellant stating "I know I am at this point, but what happened between him and that suspect in the back seat is his business because he was there. He was the one involved. I, fortunately, from I, I consider myself fortunate not to see what had occurred," or words that effect. (DEs 1-3, 8 – 90-106, 163, 164, 184, 185, 188, 189, 192-195, 199-203, 205, 210-215, 219, 223, 280, 281, 285, 299, 304; Testimony of Sergeant Moeller: VI, pgs. 44-47; Ms. [redacted] VI, pgs. 99-104, 109, 112, 118, 127, 133, 145-147; and Chief LaBerge: VII, pgs. 176, 188)

Further, based upon the above admissions by Appellant and the direct and circumstantial evidence, on or about January 17, 2013, Appellant failed to make full, complete, and/or truthful statements, and/or made false statements during the Departmental investigation as evidenced by, but not limited to: (1) Appellant stating he did not hear Deputy Funicello use the words nigger and/or coon; and (2) Appellant stating he did not witness Deputy Funicello use reportable force on Mr. [redacted] (DEs 1-3, 8 – 90-106, 277, 278, 280-282, 285, 286, 288, 293, 294, 299-301, 304, 305; Testimony of Sergeant Moeller: VI, pgs. 12, 18, 20, 25, 36, 46, 47, 77, 78, 84, 88, 89; Ms. [redacted] VI, pgs. 99-104, 109, 112, 118, 127, 133, 145-147; and Chief LaBerge: VII, pgs. 176, 188)

The Department and the Hearing Officer understands and appreciates that Appellant was not involved in the actual assault on Mr. [redacted] and was merely caught in Deputy Funicello's web of inappropriate conduct. However, as a law enforcement officer, Appellant was mandated to, but failed, to protect those in his custody, that is, Mr. [redacted] Also, appellant was mandated to, but failed, to report Funicello's inappropriate conduct. (DE 8 – 22, 23, 33, 34, 35, 40-43, 48, 50-52, 62, 72, 73, 77, 78, 90-106, 192-194, 199-203, 210-213, 217, 219, 220, 223, 294; Testimony of Sergeant Moeller: VI, pgs. 77, 78, 84, 88, 89; Ms. [redacted] VI, pgs. 99-104, 109, 112, 118, 127, 133, 145-147; Chief-LaBerge: VII, pgs. 177, 179-182, 187, 188, 190, 191, 194-198; and Appellant: VII, pgs. 243, 245, 249, 260, 261, 263, 264, 270, 272-277)

Accordingly, as stated below, the evidence established that the primary allegations in the Department's August 2, 2013 letter are true.

**1. The evidence established that on or about July 22, 2011:**

(a) Appellant was using and/or directing profanities at Mr. Wright and/or telling Mr. [redacted] to shut the "fuck" up;

(b) Appellant failed to safeguard Mr. [redacted] who was handcuffed and in custody when Deputy Funicello assaulted him;

(c) Appellant failed to contact a supervisor and/or report the use of force after admitting "I thought it was possible;" and

(d) Appellant exercised poor judgment in not wanting to be labeled as a snitch, when deciding not to report the use of force after surmising the incident was something, which had escalated out of policy. (DEs 1-3)

Notwithstanding the above, the evidence did not establish: (1) Appellant failing to recognize that Mr. [redacted] was suffering from a mental illness and appropriately addressing Mr. [redacted] behavior in accordance to the standards, protocols and expectations of the Department; and (2) Appellant placing Ms. [redacted] who was in custody of the Sheriff's Department, outside of the patrol car, unattended on a multi-lane highway, handcuffed, and facing away from the patrol car as Appellant entered the rear seat portion of the patrol care to assist Deputy Funicello. (DEs 1-3)

**2. The evidence established that on or about on January 6, 2012, Appellant *failed to make full, complete or truthful statements during a Departmental* investigation as evidence by:**

(a) Appellant failed to provide a complete account of Funicello's actions and Appellant's actions when Funicello stopped the patrol car and confronted Mr. [redacted] by stating Funicello was yelling at the person and stating "that's the whole story," and/or stating "geez what happened? I don't want to know;"

(b) Appellant stating "we got out simultaneously and I went over there," when asked if Appellant saw anything going on in the back seat of the patrol car;

(c) Appellant stating "I didn't want anything to do with it, and I didn't try to see because I didn't want to see," and/or words to that effect; and

(d) Appellant stating "I know I am at this point, but what happened between him and that suspect in the back seat is his business because he was there. He was the one involved. I, fortunately, from I, I consider myself fortunate not to see what had occurred," and/or words that effect. (DEs 1-3)

Notwithstanding the above, the evidence did not established that on or about January 6. 2012, Appellant failed to make truthful statements during a Departmental investigation as the following statements: (1) Appellant stating he never entered in the back seat of the

patrol car after it was stopped on the freeway; (2) Appellant stating "She never got out. I took her out, stood her up, nothing like that." "No. Stayed in the car," when ask if Appellant removed Ms. [redacted] from the patrol car while it was stopped; (3) Appellant stating "She started to jump out and then I'm like, no, it's cool. It's cool. Stay there," and/or words to that effect, in an attempt to explain whether Appellant removed Ms. [redacted] from the patrol car when it stopped on the freeway; and (4) Appellant stating "No" when asked if Appellant and Funicello talked to Ms. [redacted] when Appellant arrived at the downtown jail facility regarding the incident in the rear seat of the patrol car when it stopped on the freeway. (DEs 1-3)

**3. The evidence established that on or about on or about January 17, 2013, Appellant failed to make full, complete or truthful statements during a Departmental investigation as evidence by:**

(a) Appellant stating he did not hear Funicello use the words nigger and/or coon; and

(b) Appellant stating he did not witness Funicello use reportable force on Mr. [redacted] (DEs 1-3)

Notwithstanding the above, the evidence did not established that on or about January 17, 2013, Appellant failed to make truthful statements during a Departmental investigation as the following statement: (1) Appellant stating that Appellant never removed Ms. [redacted] from the patrol car when Funicello stopped the car on the freeway and confronted Mr. [redacted] (DEs 1-3)

Based upon the above, the Hearing Officer concludes that the Department has met its burden to prove the above primary allegations are true by a preponderance of the evidence. To that end, the above primary allegations in the Department's August 2, 2013, letter are true.

**If any or all of the allegations are true, is the discipline appropriate?**

As stated above, the primary allegations against Appellant are true. Also, Chief Jacques LaBerge (Chief), LA County Sheriff's Department (Department), North Division, testified credibly regarding his reasonable rationale to discharge Appellant from the position of a Deputy Sheriff. To that end, Appellant's discharge is appropriate and it is a reasonable disciplinary response to Appellant's misconduct. For the reasons stated below, the evidence, which includes the testimony and exhibits, established that the discharge is reasonably related to the seriousness of Appellant's misconduct and Appellant's record of service. (DEs 1-3, 6; Testimony of Chief LaBerge: VII, pgs. 169, 171, 173-185, 187-189, 194-198; Appellant: VII, pgs. 209, 210)

First, the evidence established that the primary allegations in the August 2, 2013, letter are true. Second, the Department's Manuel of Policy and Procedures clearly prohibit Appellant's misconduct as described above, which included, but is not limited to: (1) Appellant used profanities toward Mr. [redacted] (2) Appellant failed to safeguard Mr. [redacted] (3) Appellant failed to report the use of or reasonable suspicion of the use of force; and (4) Appellant exercised poor judgment in not wanting to be labeled as a snitch, when deciding not to report the use of force. Also, on or about January 6, 2012, Appellant failed to make complete or truthful statements during a Departmental investigation as evidence by: (1) Appellant failed to provide a complete account of Funicello's actions and Appellant's actions when Funicello stopped the patrol car; (2) Appellant stated "we got out simultaneously and I went over there," when asked if Appellant saw anything going on in the back seat; (3) Appellant stated "I didn't want anything to do with it, and I didn't try to see because I didn't want to see;" and (4) Appellant stated "I know I am at this point, but what happened between him and that suspect in the back seat is his business because he was there. "...I consider myself fortunate not to see what had occurred." In addition, on or about January 17, 2013, Appellant failed to make complete or truthful statements during a Departmental investigation as evidenced by: (1) Appellant stated he did not hear Funicello use the words nigger and/or coon; and (2) Appellant stated he did not witness Funicello use

reportable force. (DEs 1-3, 6; Testimony of Chief LaBerge: VII, pgs. 171, 173-185, 187-189, 194-198)

Third, the Department's Manuel of Policy and Procedures and the Civil Service Rules permits discipline and discharge of an employee who fails to perform employment standards. This failure includes, but is not limited to: (1) an employee who brings discredit upon himself or the Department (3-01/030.05); (2) an employee who engages in unprofessional conduct (3-01/000.10); (3) an employee who violates any rule, regulation, or policy (3-01/030.10); (4) an employee who violates use of force reporting procedures (5-09/430.00); (5) an employee who engages in inappropriate conduct toward others (3-01/030.15); (6) an employee who fails to properly perform duties and responsibilities (3-01/050.10); (7) an employee who fails to safeguard persons in custody (3-01/040.97); (8) an employee who uses coarse, profane or insulting language toward a handcuffed prisoner (3-01/030.85); and (9) an employee who fails to make a statement and/or makes a false statements during Departmental investigations (3-01/040.75). Also, the above regulations, which include Civil Service Rule 18.02, provide the authority to issue an employment discharge. (DEs 1-3, 6; Testimony of Chief LaBerge: VII, pgs. 171, 173-185, 187-189, 194-198)

Fourth, the evidence clearly established the harmful or negative effect of Appellant's misconduct to public service and the orderly or efficient operation of the Sheriff's Department. Simply put, a law enforcement officer must protect and service the public. Appellant failed to protect and serve when: (1) he failed to stop the improper use of force or intervene upon the suspicion of the use of force by Deputy Funicello; and (2) he failed to report this use of or reasonable suspicion of use of force. These failures created a harmful and a negative effect upon the Appellant's and the Department's ability to protect and serve the public. Indeed, Appellant's misconduct fatally strikes at the heart of the Department's efficient operation to protect and serve the public. This harmful or negative effect is especially relevant in this case because Appellant failed to protect Mr. [redacted] who was in Appellant's custody and control. This terrible scenario flies in the face of protecting and serving the public because Mr. [redacted] was assaulted while in the

Appellant's custody and control. While it is true that Appellant did not personally assault Mr. [redacted] Appellant's willful blindness is equally inappropriate as to administrative disciplinary action. When Appellant inappropriately chose not to see abuse of a prisoner, he also inappropriately chose not to stop it or report it. Clearly, this action established a harmful effect on the public and negatively effects the efficient operation of the Department. (DEs 1-3, 6, 8 – 40, 41-43, 48, 50-52, 72, 73, 77, 78, 90-106, 176, 178, 185, 188, 193-195, 199-203, 210-213, 277, 278, 280-283, 285, 293, 299, 302, 304; Testimony of Sergeant Moeller: VI, pgs. 12, 18, 20, 25, 36, 46, 47, 77, 78, 84, 88, 89; Ms. [redacted] VI, pgs. 99-104, 109, 112, 118, 127, 133, 145-147; Chief LaBerge: VII, pgs. 171, 173-185, 187-191, 194-198; and Appellant: VII, pgs. 213-215, 225-237, 252, 260, 263-268, 275)

Also, Appellant's admission that the fear of retaliation stopped him from reporting Funicello is not a valid excuse to either negate the harmful effect of his misconduct or remedy the detrimental effect on the Department's operation. Even Appellant admitted that the right thing to do was report, but he didn't because he didn't want to be known as a Deputy who told on a fellow Deputy. However, as stated by the Chief, a Sheriff must maintain public trust, integrity, and an ethical objective to do the right thing. In this case, Appellant did not do the right thing thereby harming the public and the Department. (DEs 1-3, 6, 8 – 22, 23, 33, 34, 35, 40-43, 48, 50-52, 62, 72, 73, 77, 78, 90-106, 280, 285, 288, 300, 301, 302, 305; Testimony of Sergeant Moeller: VI, pgs. 12, 18, 20, 25, 36, 46, 47, 77, 78, 84, 88, 89; Ms. [redacted] VI, pgs. 99-104, 109, 112, 118, 127, 133, 145-147; Chief LaBerge: VII, pgs. 169, 171, 173-185, 187-189, 194-198; and Appellant: VII, pgs. 249, 263, 264, 270, 272-277)

Further, Appellant's misconduct negatively impacted the work environment because the misconduct was so serious, and the possible future consequences are so horrific (i.e.. not stopping or reporting inappropriate or criminal conduct and turning a blind eye to said conduct), that the Department should not and cannot trust Appellant to act appropriately, especially if he takes prisoners under his custody and control. Thus, Appellant does not have the ability to effectively perform his duties, thereby impacting employment

production if not discharged. The Chief confirmed this when he testified that the Department now questions Appellant's trust, integrity and ethical objective to do the right thing. Based upon the above, as a result of Appellant's misconduct he could no longer be trusted to carry out the duties of a Deputy Sheriff. (DEs 1-3, 6, 8 – 192-195, 199-203, 210-213, 217, 219, 220, 223, 280, 281, 299, 301, 304; Testimony of Sergeant Moeller: VI, pgs. 12, 18, 20, 25, 36, 46, 47, 77, 78, 84, 88, 89; Chief LaBerge: VII, pgs. 171, 173-185, 187-189, 194-198; and Appellant: VII, pgs. 253, 254, 260, 261, 263, 276, 277)

Fifth, despite credible direct and circumstantial evidence, Appellant did not fully admit to the allegations in question. To that end, Appellant has not taken responsibility for his misconduct and thus there is a likelihood of recurrence. In addition, Appellant has a pattern of failing to report use of force because he was previously disciplined for five days for failing to report his own use of force. Appellant was disciplined for this misconduct, but his current misconduct established a pattern of poor decision-making, dishonesty, and a lack of desire to follow Departmental policy. Rather than learning from his past mistake, Appellant instead learned that he could try to say that he didn't see the use of force and thus not report it. This type of conduct, which attempts to ignore the use of force, is completely against the core values of the Department. Also, Appellant's honesty, trust, and integrity is suspect because he failed to make full, complete or truthful statements during Departmental investigations on January 6, 2012, and January 17, 2013. Thus, Appellant has not taken responsibility for his misconduct and there is a likelihood of recurrence. (DEs 1-3, 6 – 4/5-4/14, 8 – 40, 41-43, 48, 50-52, 72, 73, 77, 78, 163, 164, 176-178, 184, 185, 188, 189, 192-195, 199-203, 205, 210-215, 219, 221, 223, 277, 278, 280-283, 285, 286, 288, 293, 294, 299-302, 304, 305; Testimony of Sergeant Moeller: VI, pgs. 12, 18, 20, 25, 36, 44-47, 77, 78, 84, 87, 88, 89; Ms. [redacted] VI, pgs. 99-104, 109, 112, 118, 127, 133, 145-147; Chief LaBerge: VII, pgs. 171, 173-185, 187-189, 194-198; and Appellant: VII, pgs. 209, 210, 213-215, 225-237, 252, 260, 263-268, 275)

Further, the likelihood of recurrence is high because of Appellant's previous similar misconduct (i.e., failing to report use of force). When confronted with a difficult situation, such as reporting a fellow Deputy, the evidence has established that Appellant

will fail. Although Appellant was not involved in the actual assault, as a law enforcement officer, Appellant is mandated to protect the public and especially members of the public who are in his custody and control. Appellant has demonstrated that he simply was unable and will be unable to perform his job duties during difficult situations, such as in the case at hand. (DEs 1-3, 6 – 4/5-4/14, 8 – 40, 41-43, 48, 50-52, 72, 73, 77, 78, 163, 164, 176-178, 184, 185, 188, 189, 192-195, 199-203, 205, 210-215, 219, 221, 223, 277, 278, 280-283, 285, 286, 288, 293, 294, 299-302, 304, 305; Testimony of Sergeant Moeller: VI, pgs. 12, 18, 20, 25, 36, 44-47, 77, 78, 84, 87, 88, 89; Ms. [redacted] VI, pgs. 99-104, 109, 112, 118, 127, 133, 145-147; Chief LaBerge: VII, pgs. 171, 173-185, 187-189, 194-198; and Appellant: VII, pgs. 209, 210, 213-215, 225-237, 252, 260, 263-268, 275)

Finally, the evidence established that early in his career, Appellant was not able to properly grasp Deputy Sheriff's duties, and this inability has manifested itself in this hearing. [redacted] Appellant instead learned that he could try to say that he didn't see it and thus not report the use of force. This type of conduct, which attempts to ignore the use of force, is completely against the core values of the Department. Unfortunately for the Appellant, the evidence established that he has difficulty understanding his job duties. Accordingly, based on Appellant's inappropriate conduct, the evidence established that he had, and currently has, and will have in the future, difficulty in understanding and grasping his job duties. This is significant as a law enforcement officer because failing to discharge Appellant puts the public in danger

especially those in his custody and control. Lastly, based upon the above, Appellant's past, present and future action weighs negatively on his ability to properly carry out his duties. As such, he is a significant liability risk for the Department and County. (DEs 1-3, 6 – 4/5-4/14; Testimony of Chief LaBerge: VII, pgs. 171, 173-185, 187-189, 194-198; and Appellant: VII, pgs. 210, 211, 213)

Sixth, the Chief took into account Appellant's work history. Appellant has worked as a Deputy Sheriff since 2006. [redacted] In engaging in progressive discipline, the Chief credibly testified that based on Appellant current misconduct, rather than learning from his past mistake, Appellant instead learned that he could try to say that he didn't see it and thus not report the use of force. This type of misconduct, which attempts to ignore the use of force, is completely against the core values of the Department. Thus, even though Appellant was [redacted] To that end, the Chief appropriately considered Appellant's prior misconduct to further support the discharge. Also, Appellant's misconduct was so serious and severe as to warrant a discharge in-and-of-itself. Accordingly, Appellant's misconduct standing alone supports the discharge of Appellant. Based on the Appellant's misconduct herein, the Hearing Officer agrees with the Chief that Appellant's discharge is a reasonable disciplinary action. (DEs 1-3, 6 – 4/5-4/14, 8 – 40, 41-43, 48, 50-52, 72, 73, 77, 78, 163, 164, 176-178, 184, 185, 188, 189, 192-195, 199-203, 205, 210-215, 219, 221, 223, 277, 278, 280-283, 285, 286, 288, 293, 294, 299-302, 304, 305; Testimony of Sergeant Moeller: VI, pgs. 12, 18, 20, 25, 36, 44-47, 77, 78, 84, 87, 88, 89; Ms. [redacted] VI, pgs. 99-104, 109, 112, 118, 127, 133, 145-147; Chief LaBerge: VII, pgs. 171, 173-185, 187-189, 194-198; and Appellant: VII, pgs. 209, 210, 213-215, 225-237, 252, 260, 263-268, 275)

Based upon the above, the Hearing officer concludes that the Department followed reasonable policies when it discharged Appellant. It is concluded, therefore that

Appellant's discharge is appropriate, not excessive, and well within the Department's policies and the County Civil Service Rules.

**FINDING OF FACT**

1. In 2006, Deputy David Shea (Appellant) started working for the County of Los Angeles. Appellant held the position of a Deputy Sheriff for the Sheriff's Department (Department).

2. In a letter dated August 2, 2013, the Department discharged Appellant from his position as Deputy Sheriff from County service. The basis for the discharge was separated into the following three areas:

A. On or about July 21, 2011, while on duty, Appellant failed to conform to the standards established for Appellant's rank or position as a Deputy Sheriff when Appellant failed to safeguard and treat Mr. [redacted] and Ms. [redacted] in a respectful, courteous, and civil manner as Appellant yelled at and directed derogatory language toward Mr. [redacted] an inmate in the custody of Sheriff's Department who was suffering from mental illness. Also, Appellant failed to use reasonable judgment and exercise the integrity expected of a Deputy Sheriff and seek out assistance from a supervisor when Appellant knew or should have known Deputy Funicello used unnecessary and excessive force against Mr. [redacted] as Mr. [redacted] was handcuffed and seated in the rear seat of a patrol car, and under Appellant's control and custody. Further, Appellant failed to report to a Department supervisor, and/or document the circumstances in which Appellant witnessed the use of force against Mr. [redacted] and/or failed to obtain medical treatment for Mr. [redacted] after realizing Mr. [redacted] was assaulted. Appellant's conduct was in conflict with the Department's Core Values as Appellant failed to perform his duties, which included, but is not limited to:

a. using and/or directing profanities at Mr. [redacted] and/or telling Mr. [redacted] to "shut the fuck up;" and/or

b. failing to recognize that Mr. [redacted] was suffering from a mental illness and appropriately addressing Mr. [redacted] behavior in accordance to the standards, protocols and expectations of the Department; and/or

c. failing to safeguard Mr. [redacted] who was handcuffed and in custody when Deputy Funicello assaulted him; and/or

d. placing Ms. [redacted] who was in custody of the Sheriff's Department, outside of the patrol car, unattended on a multi-lane highway, handcuffed, and facing away from the patrol car as Appellant entered the rear seat portion of the patrol care to assist Deputy Funicello; and/or

e. failing to contact a supervisor and/or report the use of force after admitting "I thought it was possible;" and/or

f. exercising poor judgment, and/or not wanting to make ripples. and/or not wanting to be labeled as a snitch, when deciding not to report the use of force incident after surmising the incident was something which had escalated out of policy.

Pursuant to the August 2, 2013 letter, the Appellant's above misconduct allegedly violated the following Manuel of Policy and Procedures Sections:

- 3-01/030.05: General Behavior; and/or
- 3-01/000.10: Professional Conduct; and/or
- 3-01/030.10: Obedience to Laws, Regulations, and Orders [as it pertains to 5-09/430.00, Use of Force Reporting]; and/or
- 3-01/030.15: Conduct Toward Others; and/or
- 3-01/050.10: Performance to Standards; and/or
- 3-01/040.97: Safeguarding Persons in Custody; and/or
- 3-01/030.85: Derogatory Language

B. On or about January 6, 2012, Appellant failed to make full, complete, and/or truthful statements, and/or made false statements during a Departmental investigation as evidenced by, but not limited to:

a. failing to provide a complete account of Deputy Funicello's actions and Appellant's actions when Funicello stopped the patrol car and confronted Mr. [redacted] by

stating Funicello was yelling at the person and/or Appellant opened the female's door and asked if she was okay, and/or stating "that's the whole story," and/or stating "geez what happened? I don't want to know," and/or

b. stating Appellant never entered in the back seat of the patrol car after it was stopped on the freeway; and/or

c. stating "She never got out. I took her out, stood her up, nothing like that." "No. Stayed in the car," when ask if Appellant removed Ms. [redacted] from the patrol car while it was stopped; and/or

d. stating "we got out simultaneously and I went over there," when asked if Appellant saw anything going on in the back seat of the patrol car; and/or

e. stating "She started to jump out and then I'm like, no, it's cool. It's cool. Stay there," and/or words to that effect, in an attempt to explain whether Appellant removed Ms. [redacted] from the patrol car when it stopped on the freeway; and/or

f. stating "No" when asked if Appellant and Funicello talked to Ms. [redacted] when Appellant arrived at the downtown jail facility regarding the incident in the rear seat of the patrol car when it stopped on the freeway; and/or

g. stating "I didn't want anything to do with it, and I didn't try to see because I didn't want to see," and/or words to that effect; and/or

h. stating "I know I am at this point, but what happened between him and that suspect in the back seat is his business because he was there. He was the one involved. I, fortunately, from I, I consider myself fortunate not to see what had occurred," and/or words that effect.

Pursuant to the August 2, 2013 letter, the Appellant's above misconduct allegedly violated the following Manuel of Policy and Procedures Section:

- 3-01/040.75: Failure to Make a Statement and/or Making False Statements During Departmental Investigations

C. On or about January 17, 2013, Appellant failed to make full, complete, and/or truthful statements, and/or made false statements during a Departmental investigation as evidenced by, but not limited to:

a. stating Appellant did not hear Deputy Funicello use the words nigger and/or coon; and/or

b. stating that Appellant never removed Ms. [redacted] from the patrol car when Funicello stopped the car on the freeway and confronted Mr. [redacted] and/or

c. stating Appellant did not witness Funicello use reportable force on Mr. [redacted]

Pursuant to the August 2, 2013 letter, the Appellant's above misconduct allegedly violated the following Manuel of Policy and Procedures Section:

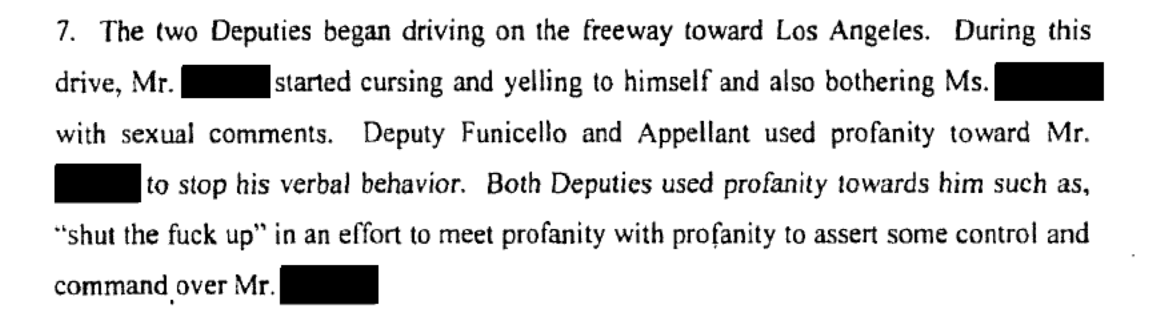
• 3-01/040.75: Failure to Make a Statement and/or Making False Statements During Departmental Investigations

3. Prior to being assigned to patrol, Appellant worked in the jail facility for approximately six months. In the jail, he had an occasion to use a "control hold" on an inmate, and he did not report it to his supervisor. Although he was required to report this use of force, he did not understand the policy and thought a "control hold" (i.e., he pulled an inmate's arm behind his body to get him in control) did not have to be reported. Appellant was disciplined for five days for failing to report.

4. Prior to being assigned patrol, Appellant completed a three-week patrol-training course. Appellant worked patrol for about a month, however, he voluntarily reenrolled himself in another three-week patrol-training course because he felt he was not ready to be a patrol officer at that time. Appellant felt that he was not prepared in various matters such as, he wanted to participate in more ride-alongs. Also, use of force reporting is taught in patrol school. After completing a second patrol-training course, he started working as a patrol officer in 2010.

5. On or about July 21, 2011, Appellant had been working with Deputy Funicello for a few weeks when they were given the assignment to transport two prisoners from Palmdale to Los Angeles. The male prisoner (Mr. [redacted] was being transported to a men's jail, and the female prisoner (Ms. [redacted] was being transported to a women's jail. Although it was only a few weeks, Appellant had knowledge of how Funicello

conducted himself on various calls. Appellant knew that Funicello had a reputation for being a hothead. Appellant was warned that Funicello used a lot of force, and was subject to a "force review" for repeated use of force.



6. On July 22, 2011, at approximately 2:00 am to 3:00 am, pursuant to their assignment to transport the two prisoners, the deputies picked up Mr. [redacted] and Ms. [redacted] and handcuffed and seat belted them in the back seat of the patrol car. Mr. [redacted] was seated behind Deputy Funicello, the driver, and Ms. [redacted] was seated behind Appellant, the front seat passenger.

7. The two Deputies began driving on the freeway toward Los Angeles. During this drive, Mr. [redacted] started cursing and yelling to himself and also bothering Ms. [redacted] with sexual comments. Deputy Funicello and Appellant used profanity toward Mr. [redacted] to stop his verbal behavior. Both Deputies used profanity towards him such as, "shut the fuck up" in an effort to meet profanity with profanity to assert some control and command over Mr. [redacted]

8. Deputy Funicello used the following racial derogatory epithets toward Mr. [redacted] an African American: nigger and coon. Two witnesses who were in the same car with Appellant (i.e., Mr. [redacted] and Ms. [redacted], who do not know each other and have not spoken since the day of incident, are consistent that Funicello stated the above derogatory racial epithets toward Mr. [redacted] during the drive. Funicello was much more vocal than Appellant and he called Mr. [redacted] a coon during the drive.

9. After about thirty minutes of Mr. [redacted] yelling, Appellant heard what he believed to be a seat belt being unbuckled. Almost immediately Deputy Funicello moved the patrol car from the freeway carpool or left lane and pulled the car to the right shoulder freeway lane. Appellant knew that Funicello was angry that evening. After pulling over, Funicello exited the patrol car and opened the back passenger door where Mr. [redacted] the handcuffed prisoner was sitting. At that point, Funicello leaned into the back seat and began hitting Mr. [redacted] Funicello hit Mr. [redacted] approximately six to eight times.

Appellant failed to stop the attack or intervene upon the suspicion of use of force. Funicello was criminally prosecuted for his unlawful behavior. Funicello was charged with a felony but plead to a misdemeanor.

10. This beating incident lasted approximately three to five minutes. During this time, to back up his partner, Appellant got out of the car and also walked around the back of the car to the driver's side where he saw that the back seat door was open and that Funicello's body was leaning into the car with one leg off the ground. Appellant was standing behind Funicello while Funicello was leaning into the back seat. Appellant properly had his eyes on Funicello even though Funicello's body filled most of the back door opening. Also, Funicello was not being pushed or pulled into or out the backseat door.

11. During this beating incident, upon seeing that Deputy Funicello was not in danger and seemed to have the situation under control, Appellant walked around the back of the car to the back seat passenger side of the car where Ms. [redacted] was seated and opened her door. Appellant wanted to check on the welfare of Ms. [redacted] and he asked her if she was okay. Although she was handcuffed, Ms. [redacted] began to step out of the car when Appellant opened the door but he motioned to her to stay in the car and she did so. Funicello and Appellant returned to their seats and Mr. [redacted] was silent for the rest of the ride.

12. Ms. [redacted] was dropped off first at the women's jail. Appellant escorted and processed Ms. [redacted] into this jail facility. While being processed, Ms. [redacted] said to Appellant, "Hey, whatever happened, I'm cool with." Based on Ms. [redacted] statement, Appellant formulated an opinion that Ms. [redacted] was speaking about pulling over to the side of the road and Deputy Funicello entering the back seat and something improper occurring between Funicello and Mr. [redacted]

13. Both Deputies escorted and processed Mr. [redacted] into the men's jail downtown. Appellant did not notice any blood, marks or bruises on Mr. [redacted] however, Appellant

did not closely physically examine Mr. [redacted] Also, Mr. [redacted] stated that he was hit in the upper body and head while he was trying to shield himself in the rear seat.

14. During the Department's investigation and in some parts of his testimony, Appellant confirmed his understanding that he is only to report use of force when he sees it.

15. After Funicello had finished hitting Mr. [redacted] he spent the rest of the ride to the downtown jail in silence.

16. Appellant suspected that something might have happened after he escorted Ms. [redacted] to her jail facility based on the comments that she made. Upon arriving at the jail facility, Ms. [redacted] turned to him and said, "Hey, whatever happened, I'm cool with." Appellant "formulated" a conclusion "that she was speaking about pulling over to the side of the road and Funicello entering the back seat and whatever had occurred there."

17. Appellant admitted that he should have but failed to report what had happened between Funicello and Mr. [redacted]

18. Appellant's fear of retaliation stopped him from reporting the incident between Funicello and Mr. [redacted]

19. The Department's Manuel of Policy and Procedures and the Civil Service Rules permits discipline and discharge of an employee who fails to perform employment standards.

20. In a previous matter, Appellant was disciplined for five days because he failed to report that he used force to control an inmate.

## CONCLUSIONS OF LAW

1. The primary allegations in the Sheriff's Department's (Department) August 2, 2013, letter are true. Also, the primary allegations are supported by the preponderance of the evidence and are true for the following reasons:

A. The Department's primary allegations against Appellant are reasonably related to the orderly or efficient operation of the Department's business.

B. The Department gave and Appellant had forewarning of the probable consequences of the Appellant's misconduct. This warning includes, but is not limited to, the Department's Manuel of Policy and Procedures and the Civil Service Rules, which permit discipline and discharge of an employee who fails to perform employment standards. This failure includes, but is not limited to: (1) an employee who brings discredit upon himself or the Department (3-01/030.05); (2) an employee who engages in unprofessional conduct (3-01/000.10); (3) an employee who violates any rule, regulation, or policy (3-01/030.10); (4) an employee who violates use of force reporting procedures (5-09/430.00); (5) an employee who engages in inappropriate conduct toward others (3-01/030.15); (6) an employee who fails to properly perform duties and responsibilities (3-01/050.10); (7) an employee who fails to safeguard persons in custody (3-01/040.97); (8) an employee who uses coarse, profane or insulting language toward a handcuffed prisoner (3-01/030.85); and (9) an employee who fails to make a statement and/or makes a false statements during Departmental investigations (3-01/040.75). Also, the above regulations, which include Civil Service Rule 18.02, provide the authority to issue an employment discharge.

C. The evidence or lack thereof demonstrated that the Department's investigation into Appellant's allegations was fair and objective.

D. The Department obtained evidence (i.e., testimony and exhibits) that the Appellant engaged in the misconduct as alleged.

E. The evidence or lack thereof that the Department applied its rules, orders and penalties even-handedly and without discrimination to all employees.

2. The discharge is an appropriate and reasonable disciplinary response to Appellant's misconduct. For the reasons stated below, the discharge is reasonably related to the seriousness of Appellant's misconduct and Appellant's record of service:

A. The evidence demonstrated that Appellant engaged in the primary allegations as set forth in the Department's August 2, 2013 letter.

B. The evidence demonstrated the harmful and negative effect of Appellant's misconduct to public service and the misconduct's reasonable relationship to the orderly or efficient operation of the Department's business. For example, a law enforcement officer must protect and service the public. Appellant failed to protect and serve when: (1) he failed to stop the improper use of force or intervene upon the suspicion of the use of force; and (2) he failed to report this use of or reasonable suspicion of use of force. This harmful or negative effect is especially relevant in this case because Appellant failed to protect Mr. Wright who was in Appellant's custody and control. Also, Appellant's misconduct negatively impacted the work environment because the misconduct was so serious, and the possible future consequences are so horrific (i.e., not stopping or reporting inappropriate or criminal conduct and turning a blind eye to said conduct), that the Department should not and cannot trust Appellant to act appropriately, especially if he takes prisoners under his custody and control. Thus, Appellant does not have the ability to effectively perform his duties, thereby impacting employment production if not discharged. Based upon the above, as a result of Appellant's misconduct he could no longer be trusted to carry out the duties of a Deputy Sheriff.

C. The evidence demonstrated that due to Appellant's misconduct, the harm to the public service was evident, that is, the negative effect on the orderly or efficient operation of the Department's business.

D. Appellant did not fully admit to the allegations in question. To that end, Appellant has not taken responsibility for his misconduct and thus there is a likelihood of recurrence. In addition, Appellant has a pattern of failing to report use of force because he was previously disciplined for five days for failing to report. Appellant was disciplined for this misconduct, but his current misconduct established a pattern of poor decision-making, dishonesty, and a lack of desire to follow Departmental policy. Rather than learning from his past mistake, Appellant instead learned that he could try to say that

he didn't see the use of force and thus not report it. Also, Appellant's honesty, trust, and integrity are suspect because he failed to make truthful statements during Departmental investigations on January 6, 2012, and January 17, 2013. Thus, Appellant has not taken responsibility for his misconduct and there is a likelihood of recurrence.

E. Appellant's misconduct was so serious and severe as to warrant a discharge in-and-of-itself. Accordingly, Appellant's misconduct standing alone supports the discharge of Appellant. Also, in a previous similar matter, Appellant was disciplined for five days because he failed to report that he used force to control an inmate. In engaging in progressive discipline, based on Appellant current misconduct, rather than learning from his past mistake, Appellant instead learned that he could try to say that he didn't see it and thus not report the use of force. Thus, even though Appellant was disciplined for previous similar misconduct, it did not deter subsequent misconduct. Accordingly, Appellant's past and current misconduct establishes a pattern of poor decision-making, dishonesty, and no or low regard for following Department policy. To that end, although not required because of the seriousness of Appellant's misconduct, Appellant's prior misconduct further supports the discharge. Thus, Appellant's discharge is a reasonable, appropriate, not excessive, and well within the Department policies and the County Civil Service Rules.

## RECOMMENDATION

The recommendation is that Appellant's discharge, effective as of the close of business on August 1, 2013, is sustained.

Dated: 6/25/14

Respectfully submitted,

Robert M. Cuen, Esq.
Hearing Officer



# County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF

August 2, 2013

Deputy David Shea, #[redacted]

Dear Deputy Shea:

On July 3, 2013, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 2305615. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, it has been determined that the recommended discipline is appropriate.

You are hereby notified that you were discharged from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective as of the close of business on August 1, 2013.

An investigation under IAB File Number IV2305615, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior; and/or 3-01/000.10, Professional Conduct; and/or 3-01/030.10, Obedience to Laws, Regulations, and Orders [as it pertains to 5-09/430.00, Use of Force Reporting]; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/050.10, Performance to Standards; and/or 3-01/040.97, Safeguarding Persons in Custody; and/or 3-01/030.85, Derogatory Language, on or about July 21, 2011, while on duty, you failed to conform to the standards established for your rank or position as a deputy sheriff when you failed to safeguard and treat

[redacted] and [redacted] in a respectful, courteous, and civil manner as you yelled at and directed derogatory language toward [redacted] an inmate in the custody of the Los Angeles County Sheriff's Department who was apparently suffering from mental illness. You failed to use reasonable judgment and exercise the integrity expected of a deputy sheriff and seek out assistance from a supervisor when you knew or should have known Deputy Matthew Funicello used unnecessary and excessive force against [redacted] as [redacted] was handcuffed and seated in the rear seat of a patrol car, and under your control and custody. You failed to report to a Department supervisor, and/or document the circumstances in which you witnessed the use of force against [redacted] and/or failed to obtain medical treatment for [redacted] after realizing [redacted] was assaulted. Your conduct was in conflict with the Department's Core Values as you failed to perform your duties honorably, causing undue embarrassment and/or damage to the reputation of, and/or eroding the public's confidence in the Department. You brought discredit to yourself and the Department as evidenced by, but not limited to:

a. using and/or directing profanities at [redacted] and/or telling [redacted] to "shut the fuck up;" and/or,

b. failing to recognize that [redacted] was suffering from mental illness and appropriately addressing Dewayne Wright's behavior in accordance to the standards, protocols and expectations of the Department; and/or,

c. failing to safeguard [redacted] who was handcuffed and in custody when Deputy Matthew Funicello assaulted him; and/or,

d. placing [redacted] who was in the custody of the Los Angeles Sheriff's Department, outside of the patrol car, unattended on a multi-lane highway, handcuffed, and facing away from the patrol car, as you entered the rear seat portion of the patrol car to assist Deputy Funicello; and/or,

e. failing to contact a supervisor and/or report the use of force after admitting "I thought it was possible;" and/or,

f. exercising poor judgment, and/or not wanting to make ripples, and/or not wanting to be labeled as a snitch, when deciding not to report the use of force incident to a Department supervisor after surmising the incident was something which had escalated out of policy, and/or words to that effect.

2. That in violation of Manual of Policy and Procedures Section 3-01/040.75, Failure to Make a Statement and/or Making False Statements During Departmental Investigations, on or about January 6, 2012, you failed to make full, complete, and/or truthful statements, and/or made false statements during a Departmental investigation as evidenced by, but not limited to:

a. failing to provide a complete account of Deputy Funicello's actions and your actions when Deputy Funicello stopped the patrol vehicle on the freeway and confronted [redacted] by only stating Deputy Funicello was yelling at the person and/or you opened the female's door and asked if she was okay, and/or stating "that's the whole story," and/or stating "geez what happened? I don't want to know;" and/or,

b. stating you never entered into the back seat area of the patrol vehicle after it was stopped on the freeway; and/or,

c. stating "She never got out. I took her out, stood her up, nothing like that." "No. Stayed in the car," when asked if at any time did you remove [redacted] from the car while it was stopped on the freeway, and/or words to that effect; and/or,

d. stating, "we got out simultaneously and I went over there," when asked if you saw anything going on in the back seat of the vehicle; and/or,

e. stating, "She started to jump out and then I'm like, no, it's cool. It's cool. Stay there," and/or words to that effect, in an attempt to explain whether you removed [redacted] from the patrol vehicle when it was stopped on the freeway; and/or,

f. stating, "No " when asked if you and Deputy Funicello talked to [redacted] when you arrived at Century Regional Detention Facility regarding the incident in the rear seat of the patrol car when it was stopped on the freeway; and/or,

g. stating, "I didn't want anything to do with it, and I didn't try to see because I didn't want to see," and/or words to that effect; and/or,

h. stating, "I know I am at this point, but what happened between him and that suspect in the back seat is his business because he was there. He was the one involved. I, fortunately, from I, I consider myself fortunate not to see what had occurred," and/or words to that effect.

3. That in violation of Manual of Policy and Procedures Section 3-01/040.75, Failure to Make a Statement and/or Making False Statements During Departmental Investigations, on or about January 17, 2013, you failed to make full, complete, and/or truthful statements, and/or made false statements as evidenced by, but not limited to:

a. stating you did not hear Deputy Funicello use the words nigger and/or coon; and/or,

b. stating that you never removed [redacted] from the patrol car when Deputy Funicello stopped the vehicle on the freeway and confronted [redacted]; and/or,

c. stating you did not witness Deputy Funicello use reportable force on [redacted].

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet which are incorporated herein by reference.

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

You may appeal the Department's action in this matter pursuant to Rules 4.02, 4.05 and 18.02 of the Civil Service Rules.

You may, if you so desire, within fifteen (15) business days from the date of service of this notice of discharge, request a hearing on these charges before the Los Angeles County Civil Service Commission, 222 North Grand Avenue, Los Angeles, California 90012.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

JACQUES A. LA BERGE, CHIEF
NORTH PATROL DIVISION

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures and Civil Service Rules.

JAL:RAA:AEA:md

c: Advocacy Unit
Jacques A. La Berge, Chief, North Patrol Division
Don P. Ford, Captain, Palmdale Station
Internal Affairs Bureau
Office of Independent Review (OIR)
Kevin E. Hebert, Captain, Personnel Administration



Leroy D. Baca, Sheriff

# County of Los Angeles
## Sheriff's Department Headquarters

4700 Ramona Boulevard
Monterey Park, California 91754-2169



July 3, 2013

Deputy Matthew Funicello, #[redacted]
[redacted]

Dear Deputy Funicello:

You are hereby notified that it is the intention of the Sheriff's Department to discharge you from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective the close of business July 25, 2013.

An investigation under IAB File Number IV2305615, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/050.10, Performance to Standards; and/or 3-01/030.10, Obedience to Laws, Regulations, and Orders [as it pertains to 5-09/430.00, Use of Force Reporting, and/or 149 P.C., Assault under the Color of Authority]; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/025.10, Unreasonable Force; and/or 3-01/030.85, Derogatory Language; and/or 3-01/030.05, General Behavior, on or about July 21, 2011, while on duty, you willfully failed to conform to the work standards established for your rank and position as a deputy sheriff when you yelled at and directed derogatory language toward [redacted] an inmate in the custody of the Los Angeles County Sheriff's Department who was apparently suffering from mental illness; and/or failed to safeguard and treat [redacted] in a respectful, courteous, and civil manner when you used unnecessary and excessive force against [redacted] as [redacted] was handcuffed and seated in the rear seat of a patrol car, and under your control and custody. You failed to report to a Department supervisor, and/or document the

circumstances in which you used force against [redacted] and/or failed to obtain medical treatment for [redacted] after assaulting him. On April 11, 2013, after the District Attorney's Office filed charges in the Los Angeles Superior Court (case # BA409956), a warrant was issued naming you for one felony count of 149 P.C., Assault by a Public Officer. You were booked regarding the arrest warrant bringing discredit to yourself and/or the Department as evidenced by, but not limited to:

a. referring to [redacted] as a nigger, and/or coon, and stating to [redacted] "Shut the fuck up," " Learn your place," "When I tell you to shut the fuck up, then shut the fuck up," and "I'm not your fucking dawg,'" and/or words to that effect; and/or, failing to recognize that [redacted] was suffering from mental illness and appropriately addressing [redacted] behavior in accordance to the standards, protocols, and expectations of the Department; and/or,

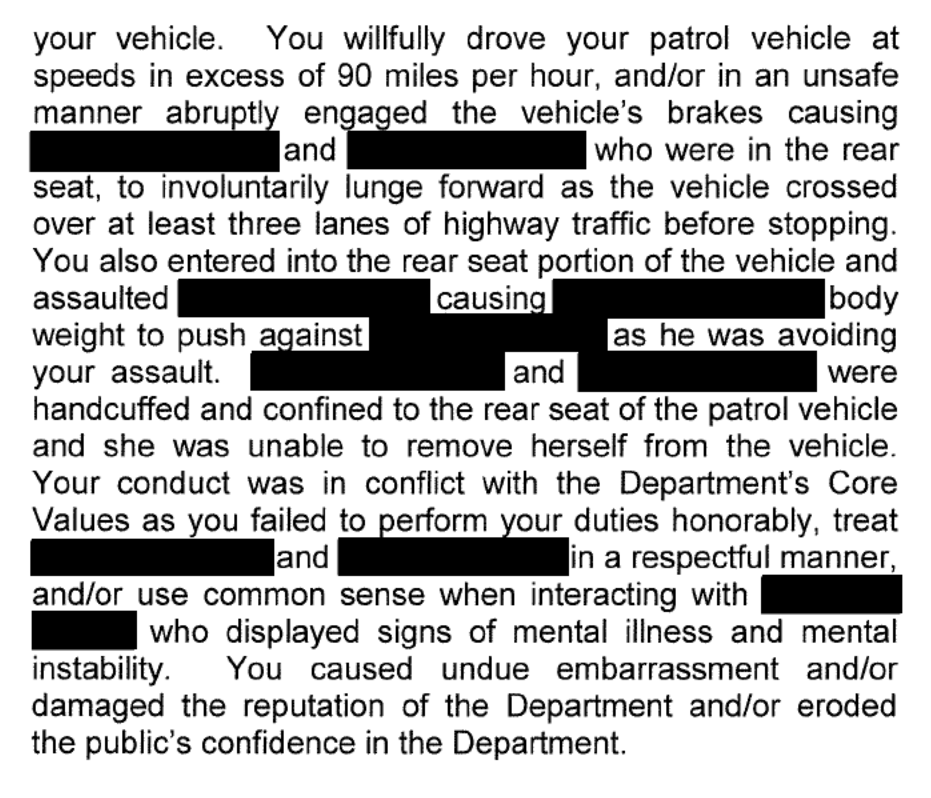
b. striking [redacted] with your hands and fist approximately six times about the face and body; and/or,

c. transporting and transferring [redacted] to the Twin Towers Correctional Facility without seeking medical attention for [redacted] and/or alerting the medical staff at Twin Towers Correctional Facility that force was used on [redacted] and/or,

d. failing to report your use of force against [redacted] to a Department supervisor, and/or document the use of force; and/or,

e. being named as a suspect regarding 149 P.C., Assault by a Public Officer against [redacted]

2. That in violation of Manual of Policy and Procedures Sections 3-01/050.10, Performance to Standards; and/or 3-01/000.10, Professional Conduct; and/or 3-01/040.97, Safeguarding Persons in Custody, on or about July 21, 2011, while on duty, you failed to conform to the work standards established for your rank and position as a deputy sheriff when you failed to safeguard [redacted] and [redacted] who were both in the custody of the Los Angeles County Sheriff's Department and passengers in


your vehicle. You willfully drove your patrol vehicle at speeds in excess of 90 miles per hour, and/or in an unsafe manner abruptly engaged the vehicle's brakes causing [redacted] and [redacted] who were in the rear seat, to involuntarily lunge forward as the vehicle crossed over at least three lanes of highway traffic before stopping. You also entered into the rear seat portion of the vehicle and assaulted [redacted] causing [redacted] body weight to push against [redacted] as he was avoiding your assault. [redacted] and [redacted] were handcuffed and confined to the rear seat of the patrol vehicle and she was unable to remove herself from the vehicle. Your conduct was in conflict with the Department's Core Values as you failed to perform your duties honorably, treat [redacted] and [redacted] in a respectful manner, and/or use common sense when interacting with [redacted] who displayed signs of mental illness and mental instability. You caused undue embarrassment and/or damaged the reputation of the Department and/or eroded the public's confidence in the Department.

3. That in violation of Manual of Policy and Procedures Section 3-01/040.70, False Statements, on or about October 2011, you made false statements when questioned regarding a Watch Commander's Service Comment Report (200681) which alleged you assaulted [redacted] on July 21, 2011, as evidenced by, but not limited to:

   a. stating to Lieutenant Paul Clay that nothing happened when you transported Dewayne Wright and [redacted] from Palmdale Sheriff's Station to the Twin Towers Correctional Facility, and Century Regional Detention Facility, and/or words to that effect; and/or,

   b. stating to Lieutenant [redacted] that you never stopped your vehicle when transporting [redacted] and [redacted] from Palmdale Sheriff's Station to the Twin Towers Correctional Facility and Century Regional Detention Facility, and/or words to that effect; and/or,

   c. stating to Lieutenant Paul Clay that you never struck [redacted] with your fist or weapons, and/or words to that effect.

4. That in violation of Manual of Policy and Procedures Section 3-01/040.70, False Statements, on or about January 5, 2012, you made false statements when questioned regarding a Watch Commander's Service Comment Report (200681) which alleged you assaulted Dewayne Wright on July 21, 2011, as evidenced by, but not limited to:

   a. stating to Lieutenant Paul Clay that you pulled the patrol car over in order to engage the seatbelt for [redacted] as you transported [redacted] and [redacted] from Palmdale Sheriff's Station to the Twin Towers Correctional Facility and Century Regional Detention Facility.

5. That in violation of Manual of Policy and Procedures Section 3-01/040.75 Failure to Make Statements and/or Making False Statements During Departmental Investigations, on or about January 13, 2013, you failed to make full, complete, and/or truthful statements during a Departmental interview when you stated, "Yes sir," to investigators when asked if the statements you provided to Lieutenant Paul Clay on or about October 2011, regarding Watch Commander's Service Comment Report (200681) were accurate, and/or stated you agreed your statement to Lieutenant Paul Clay that you never stopped your vehicle and/or struck [redacted] with a weapon or fist was accurate, and/or words to that effect.

6. That in violation of Manual of Policy and Procedures Section 3-01/040.75 Failure to Make Statements and/or Making False Statements During Departmental Investigations, on or about February 14, 2013, you failed to make full, complete, and/or truthful statements during a departmental interview regarding an allegation of use of force against [redacted] as evidenced by, but not limited to:

   a. stating, "Yes, ma'am", when asked if you pulled to the shoulder of the 405 freeway in order to fasten [redacted] seatbelt, and/or words to that effect; and/or,

   b. stating, "Yes, as safely and as quickly as I could. I didn't, you know, I didn't pull a NASCAR or nothing", when asked if you made a quick exit off to the shoulder of the freeway, and/or words to that effect; and/or,

c. stating "Yes, yeah," when it was suggested that you drove the patrol vehicle carrying [redacted] and [redacted] at 70 miles an hour, and/or words to that effect; and/or,

d. stating, "I reached in to grab him and he looked as if he was going to spit at me again, and so I pushed his head back and so he wouldn't spit at me, and held him there, so I can get the seatbelt back on him," and/or words to that effect; and/or,

e. stating, "Yes," when asked if [redacted] spit at you when he opened the car door, and/or words to that effect; and/or,

f. stating, "I wouldn't, no. I don't remember yelling at him. I just – remember telling him very forceful, forcefully," when asked if you were yelling at [redacted] and/or words to that effect; and/or,

g. stating, "No," when asked if you referred to [redacted] as a nigger or coon, and/or words to that effect; and/or,

h. stating, "No, ma'am," when asked if you felt it was necessary to report this incident, and/or words to that effect; and/or,

7. That in violation of Manual of Policy and Procedures Section 3-01/040.76, Obstructing an Investigation/Influencing a Witness, on or about July 21, 2011, you took action that could have interfered with, delayed, obstructed, distorted, or unduly influenced an investigation when you confronted [redacted] at the Century Regional Detention Facility as evidenced by, but not limited to:

   a. attempting to apologize to [redacted] by explaining to her that, "sometimes guys needed to learn their place," and/or words to that effect; and/or,

   b. questioning if [redacted] was okay as you told her they were sorry she had to see any of this, and explaining that, "They don't conduct business like this," and/or words to that effect; and/or,

c. asking [redacted] if, "this is gonna be over," and/or words to that effect; and/or,

d. stating to [redacted] "This has never happened," and or words to that effect.

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet which are incorporated herein by reference.

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with Chief Jacque La Berge, on July 25, 2013, at 1000 hours, in his office, which is located at 4700 Ramona Boulevard, Monterey Park, California 91754. If you are unable to appear at the scheduled time and wish to schedule some other time prior to July 25, 2013, for your oral response, please call Chief La Berge's secretary at [redacted] for an appointment.

If you choose to respond in writing, please call Chief La Berge's secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to Chief La Berge's office by no later than July 25, 2013.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the discipline indicated herein.

If you did not receive the investigative material on which your discipline is based at the time you were served with this correspondence, you may contact the Internal Affairs Bureau at (323) 890-5300, to obtain a copy of the case file.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Alicia E. Ault, Captain
Internal Affairs Bureau

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.

AEA:PMP:cj

c: Advocacy Unit
Employee Relations Unit
Jacques La Berge, Chief, North Patrol Division
Internal Affairs Bureau
Office of Independent Review (OIR)
(File #2305615)




| | |
|---|---|
| In the Matter of the Discharge of<br><br>Matthew Funicello #[redacted]<br><br>From the Position of<br>Deputy Sheriff<br>Los Angeles County Sheriff's Department | STIPULATED SETTLEMENT AGREEMENT |

PRELIMINARY STATEMENT

This Agreement is entered into between the Los Angeles County Sheriff's Department (hereinafter referred to as "Department") and Matthew Funicello (hereinafter referred to as "Deputy Funicello"), Employee No. [redacted]

RECITAL

The Department and Deputy Funicello are interested parties in the Internal Affairs Bureau Investigation under IAB No. 2305615. Both desire to resolve all disputes arising as the result of that investigation, to avoid litigation and further administrative process upon the terms and conditions hereinafter set forth.

NOW THEREFORE, the Department and Deputy Funicello for and in consideration of the mutual covenants herein, agree as follows:

1. Upon execution of this Agreement, the Department will rescind the Department's Letter of Discharge dated July 29, 2013. In lieu of discharge, Deputy Funicello understands, agrees, and acknowledges that he will submit his resignation from the position of Deputy Sheriff, Item No. 2708A, to the Department effective as of the close of business on July 29, 2013. The resignation will be attached to this agreement as Exhibit "A".

2. Upon execution of this agreement, the Department shall seal in an envelope, in Deputy Funicello's personnel file, the Department's Letter of Intent dated July 3, 2013, the Letter of Discharge dated July 29, 2013, a copy of this settlement agreement, and all other references of the discharge action in Deputy Funicello's personnel file. The envelope shall state, "to be opened only by order of the Court, order of the Sheriff, or upon Matthew Funicello's written authorization."

3. The Department's Personnel Performance Index will state "Founded, Resigned" under IAB No. 2305615.

4. Moreover, Deputy Funicello agrees to waive all rights in IAB Case Number 2305615 pursuant to Skelly v. State Personnel Board (1975) 15 Cal.3d 194.

5. Upon execution of this settlement agreement, Deputy Funicello agrees to file a letter of withdrawal with the Civil Service Commission in connection with Civil Service Case No. 13-363.

6. Deputy Funicello agrees to waive any and all future administrative and/or judicial remedies involving or pertaining to the resignation and/or the Internal Affairs Bureau Investigation under IAB No. 2305615, including, but not limited to, appeals to the Los Angeles County Civil Service Commission and/or the Los Angeles County Employee Relations Commission or any court of law.

7. The parties further agree that this Settlement shall not be considered, cited or used in future disputes as establishing past precedent or past employment practice. This Agreement resolves the dispute between Deputy Funicello and the Department, and is not to be applied to any other facts or disputes.

8. In consideration of the terms and conditions set forth herein, Deputy Funicello agrees to fully release, acquit and forever discharge the County, and all present and former officers, employees and agents of the County and their heirs, successors, assigns and legal representatives from any and all liability whatsoever for any and all claims arising out of or connected with the employment relationship between the County and Deputy Funicello concerning the subject matter herein. Additionally, Deputy Funicello specifically acknowledges that he has not been the subject of discrimination in any form, including, but not limited to, discrimination based upon age, race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, parental status, or sex, and that he has no claim against the Department for any such discrimination, whether any such claim is presently known or not known by him.

9. Deputy Funicello further agrees to relinquish and expressly waives all rights conferred upon him by the provisions of California Civil Code Section 1542, which reads as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

SETTLEMENT AGREEMENT
MATTHEW FUNICELLO #[redacted]

10. Each party hereto represents and agrees that he or it has carefully read and fully understands all of the provisions of the Agreement, and that he or it is voluntarily, without any duress or undue influence on the part of or on behalf of any part entering into this Agreement.

11. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy of facsimile transmission of the Agreement, including signatures, shall be deemed to constitute evidence of the Agreement having been executed.

12. The date of the last signature placed hereon shall hereinafter be known as the "date of execution" and the "effective date" of this Agreement.

13. The parties agree that the foregoing compromises the entire Agreement between the parties and that there have been no other promises made by any party. Any modification of this Agreement must be in writing.

I have read the foregoing Settlement Agreement and I accept and agree to the provisions contained herein and hereby execute it voluntarily and with full understanding of its consequences. I further acknowledge that I have been afforded the opportunity to consult with legal counsel prior to signing this agreement.

Deputy Matthew Funicello #[redacted] — 06-09-14 Date

As to form only:

Deborah B. Wadleigh, Attorney
Green & Shinee — 6/13/14 Date

For the Department:

JACQUES A. LABERGE, CHIEF
NORTH PATROL DIVISION — 05/07/14 Date




County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169




LEROY D. BACA, SHERIFF

July 29, 2013

Deputy Matthew Funicello, #[redacted]
[redacted]

Dear Deputy Funicello:

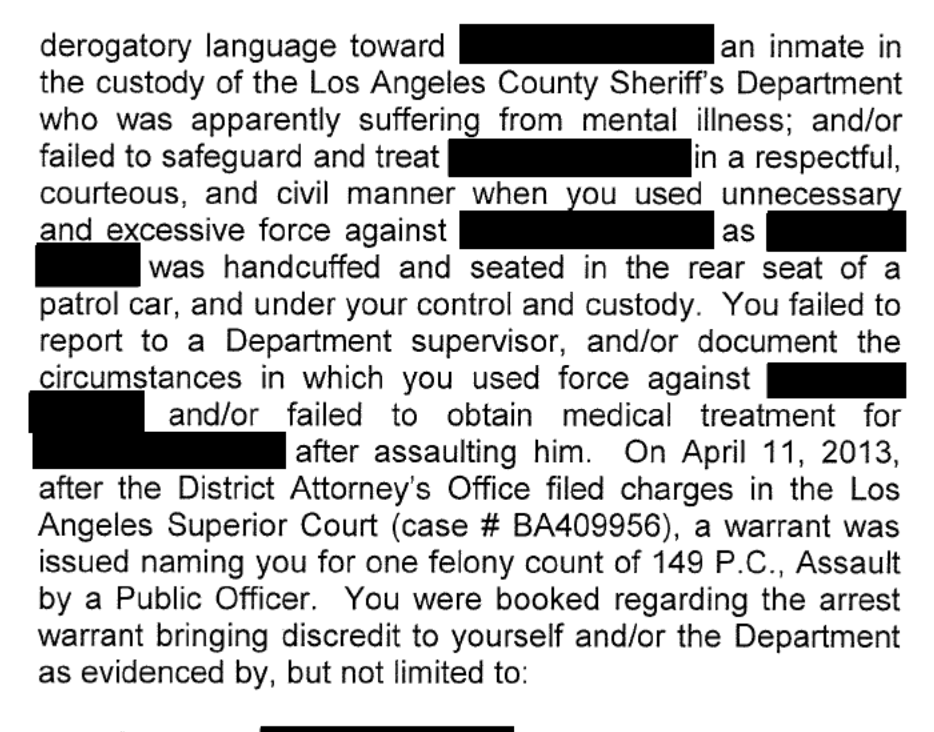
On July 3, 2013, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 2305615. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, it has been determined that the recommended discipline is appropriate.

You are hereby notified that you were discharged from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective as of the close of business on July 25, 2013.

An investigation under IAB File Number IV2305615, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/050.10, Performance to Standards; and/or 3-01/030.10, Obedience to Laws, Regulations, and Orders [as it pertains to 5-09/430.00, Use of Force Reporting, and/or 149 P.C., Assault under the Color of Authority]; and/or 3-01/030.15, Conduct Toward Others; and/or 3-01/025.10, Unreasonable Force; and/or 3-01/030.85, Derogatory Language; and/or 3-01/030.05, General Behavior, on or about July 21, 2011, while on duty, you willfully failed to conform to the work standards established for your rank and position as a deputy sheriff when you yelled at and directed



derogatory language toward [redacted] an inmate in the custody of the Los Angeles County Sheriff's Department who was apparently suffering from mental illness; and/or failed to safeguard and treat [redacted] in a respectful, courteous, and civil manner when you used unnecessary and excessive force against [redacted] as [redacted] was handcuffed and seated in the rear seat of a patrol car, and under your control and custody. You failed to report to a Department supervisor, and/or document the circumstances in which you used force against [redacted] and/or failed to obtain medical treatment for [redacted] after assaulting him. On April 11, 2013, after the District Attorney's Office filed charges in the Los Angeles Superior Court (case # BA409956), a warrant was issued naming you for one felony count of 149 P.C., Assault by a Public Officer. You were booked regarding the arrest warrant bringing discredit to yourself and/or the Department as evidenced by, but not limited to:

a. referring to [redacted] as a nigger, and/or coon, and stating to [redacted] "Shut the fuck up," " Learn your place," "When I tell you to shut the fuck up, then shut the fuck up," and "I'm not your fucking dawg,'" and/or words to that effect; and/or, failing to recognize that [redacted] was suffering from mental illness and appropriately addressing [redacted] behavior in accordance to the standards, protocols, and expectations of the Department; and/or,

b. striking [redacted] with your hands and fist approximately six times about the face and body; and/or,

c. transporting and transferring [redacted] to the Twin Towers Correctional Facility without seeking medical attention for [redacted] and/or alerting the medical staff at Twin Towers Correctional Facility that force was used on [redacted] and/or,

d. failing to report your use of force against [redacted] to a Department supervisor, and/or document the use of force; and/or,

e. being named as a suspect regarding 149 P.C., Assault by a Public Officer against [redacted]

2. That in violation of Manual of Policy and Procedures Sections 3-01/050.10, Performance to Standards; and/or 3-01/000.10, Professional Conduct; and/or 3-01/040.97, Safeguarding Persons in Custody, on or about July 21, 2011, while on duty, you failed to conform to the work standards established for your rank and position as a deputy sheriff when you failed to safeguard [redacted] and [redacted] who were both in the custody of the Los Angeles County Sheriff's Department and passengers in your vehicle. You willfully drove your patrol vehicle at speeds in excess of 90 miles per hour, and/or in an unsafe manner abruptly engaged the vehicle's brakes causing [redacted] and [redacted] who were in the rear seat, to involuntarily lunge forward as the vehicle crossed over at least three lanes of highway traffic before stopping. You also entered into the rear seat portion of the vehicle and assaulted [redacted] causing [redacted] body weight to push against [redacted] as he was avoiding your assault. [redacted] and [redacted] were handcuffed and confined to the rear seat of the patrol vehicle and she was unable to remove herself from the vehicle. Your conduct was in conflict with the Department's Core Values as you failed to perform your duties honorably, treat [redacted] and [redacted] in a respectful manner, and/or use common sense when interacting with [redacted] who displayed signs of mental illness and mental instability. You caused undue embarrassment and/or damaged the reputation of the Department and/or eroded the public's confidence in the Department.

3. That in violation of Manual of Policy and Procedures Section 3-01/040.70, False Statements, on or about October 2011, you made false statements when questioned regarding a Watch Commander's Service Comment Report (200681) which alleged you assaulted [redacted] on July 21, 2011, as evidenced by, but not limited to:

   a. stating to Lieutenant Paul Clay that nothing happened when you transported [redacted] and [redacted] from Palmdale Sheriff's Station to the Twin Towers Correctional Facility, and Century Regional Detention Facility, and/or words to that effect; and/or,

   b. stating to Lieutenant Paul Clay, that you never stopped your vehicle when transporting [redacted] and

[redacted] from Palmdale Sheriff's Station to the Twin Towers Correctional Facility and Century Regional Detention Facility, and/or words to that effect; and/or,

c. stating to Lieutenant Paul Clay that you never struck [redacted] with your fist or weapons, and/or words to that effect.

4. That in violation of Manual of Policy and Procedures Section 3-01/040.70, False Statements, on or about January 5, 2012, you made false statements when questioned regarding a Watch Commander's Service Comment Report (200681) which alleged you assaulted Dewayne Wright on July 21, 2011, as evidenced by, but not limited to:

   a. stating to Lieutenant Paul Clay that you pulled the patrol car over in order to engage the seatbelt for Dewayne Wright as you transported [redacted] and [redacted] from Palmdale Sheriff's Station to the Twin Towers Correctional Facility and Century Regional Detention Facility.

5. That in violation of Manual of Policy and Procedures Section 3-01/040.75 Failure to Make Statements and/or Making False Statements During Departmental Investigations, on or about January 13, 2013, you failed to make full, complete, and/or truthful statements during a Departmental interview when you stated, "Yes sir," to investigators when asked if the statements you provided to Lieutenant Paul Clay on or about October 2011, regarding Watch Commander's Service Comment Report (200681) were accurate, and/or stated you agreed your statement to Lieutenant Paul Clay that you never stopped your vehicle and/or struck [redacted] with a weapon or fist was accurate, and/or words to that effect.

6. That in violation of Manual of Policy and Procedures Section 3-01/040.75 Failure to Make Statements and/or Making False Statements During Departmental Investigations, on or about February 14, 2013, you failed to make full, complete, and/or truthful statements during a departmental interview regarding an allegation of use of force against [redacted] as evidenced by, but not limited to:

a. stating, "Yes, ma'am", when asked if you pulled to the shoulder of the 405 freeway in order to fasten [redacted] seatbelt, and/or words to that effect; and/or,

b. stating, "Yes, as safely and as quickly as I could. I didn't, you know, I didn't pull a NASCAR or nothing", when asked if you made a quick exit off to the shoulder of the freeway, and/or words to that effect; and/or,

c. stating "Yes, yeah," when it was suggested that you drove the patrol vehicle carrying [redacted] and [redacted] at 70 miles an hour, and/or words to that effect; and/or,

d. stating, "I reached in to grab him and he looked as if he was going to spit at me again, and so I pushed his head back and so he wouldn't spit at me, and held him there, so I can get the seatbelt back on him," and/or words to that effect; and/or,

e. stating, "Yes," when asked if [redacted] spit at you when he opened the car door, and/or words to that effect; and/or,

f. stating, "I wouldn't, no. I don't remember yelling at him. I just – remember telling him very forceful, forcefully," when asked if you were yelling at [redacted] and/or words to that effect; and/or,

g. stating, "No," when asked if you referred to [redacted] as a nigger or coon, and/or words to that effect; and/or,

h. stating, "No, ma'am," when asked if you felt it was necessary to report this incident, and/or words to that effect; and/or,

7. That in violation of Manual of Policy and Procedures Section 3-01/040.76, Obstructing an Investigation/Influencing a Witness, on or about July 21, 2011, you took action that could have interfered with, delayed, obstructed, distorted, or unduly influenced an investigation when you confronted [redacted] at the Century Regional Detention Facility as evidenced by, but not limited to:

a. attempting to apologize to [redacted] by explaining to her that, "sometimes guys needed to learn their place," and/or words to that effect; and/or,

b. questioning if [redacted] was okay as you told her they were sorry she had to see any of this, and explaining that, "They don't conduct business like this," and/or words to that effect; and/or,

c. asking [redacted] if, "this is gonna be over," and/or words to that effect; and/or,

d. stating to [redacted] "This has never happened," and or words to that effect.

Additional facts for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet which are incorporated herein by reference.

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

You may appeal the Department's action in this matter pursuant to Rules 4.02, 4.05 and 18.02 of the Civil Service Rules.

You may, if you so desire, within fifteen (15) business days from the date of service of this notice of discharge, request a hearing on these charges before the Los Angeles County Civil Service Commission, 222 North Grand Avenue, Los Angeles, California 90012.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

JACQUES A. LA BERGE, CHIEF
NORTH PATROL DIVISION

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures and Civil Service Rules.